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THE GOVERNOR'S COMMISSION
ON THE REDUCTION
OF AUTOMOBILE INSURANCE RATES



IN
BALTIMORE CITY

AN ALTERNATIVE REPORT

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Philip O. Foard

September 1, 1995

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I. INTRODUCTION

This Commission was appointed to determine why some Baltimore City residents are paying inordinate amounts for automobile insurance when compared to the surrounding suburban areas (indeed, some areas within the City itself); and to make recommendations to alleviate the heavy burden those rates are inflicting upon those largely poor and black neighborhoods of the inner City.

As to the why, it is apparent, as even the chairman's report concedes, that the use of zip codes to establish geographic territories for rating purposes, has greatly exacerbated an already serious problem existing in the City, creating not only an affordability problem but availability problem as well. Private insurers have essentially abandoned certain areas of the City to MAIF, regardless of the personal responsibility and the clean records of those individual insureds living in those areas.

It is precisely those otherwise standard policy risks who, but for their address, should be eligible for the same affordable rates as the rest of the Baltimore Metropolitan Area, for whom our

efforts should have been directed. It is because we have not done so, that I felt compelled to write a separate, or alternative report.

II. TERRITORIAL RATING BY ZIP CODES IS UNFAIR

The chairman's report assumes that territorial rating is legal as long as it is based on some objective criteria. The only objective criteria used by insurers, however, is loss costs or the amount paid out in claims against policies on vehicles garaged in the territory. By definition then, drivers who cause accidents either inside or outside those territories set the difference in base rates or pure premium for everyone else within that rating territory. A good driver may get a discount on that base rate; but no matter how conscientious and responsible a driver, no matter how clean the driving record, they cannot -- short of moving out -- get away from the base territorial rate established by the insurer for their neighborhood. And they have moved out in droves, either actually if they can afford it or by registering the vehicle at another address.

It does not take a rocket scientist to realize that geographical distinctions, based purely on loss cost without first establishing (as originally contemplated) population density, traffic congestion and other physical characteristics applicable to a territory large enough to encompass the natural day-to-day driving habits of its residents, is utterly without foundation and subject to great abuse. The insurance industry has not only failed over the years to enlarge the rating territory used for Baltimore City to include the immediate surrounding metropolitan area suburbs whose residents are for the most part daily commuters; but has instead reduced those rating areas within the City to zip codes, thereby giving relief to some of the better neighborhoods of the City while raising base rates or pure premiums through the roof in others.

III. MAIF HAS UNINTENTIONALLY COMPOUNDED THE PROBLEM

MAIF was introduced in 1972 to take over assigned risks from private insurers for two basic reasons: (1) due to the mandatory nature of some coverages, insurance must be made available for

those drivers who cannot be placed in the private insurance market; and (2) because bad drivers should not be forced into the private system which inevitably increases rates for good drivers. Unfortunately, because of MAIF's existence, private insurers have not only been able to get rid of bad drivers, but entire areas of the inner City including the good drivers within those areas, through the simple expedience of using smaller territorial rating units (or zip codes) within the City.

A symbiotic relationship has developed between MAIF and the private insurance companies. MAIF bases its rates on loss costs for the City as a whole. This ensures a rate for non-standard drivers which, while high, is not so confiscatory as to be in conflict with its primary purpose of assuring availability of legally mandated automobile insurance. If on the other hand, MAIF, like private insurers, used zip codes, the rate would be so high in the inner City that its survival politically would be put in play; and the industry's old nemesis assigned risk would almost certainly resurface. Indeed, this was one of the early proposals of House

Bill 923.

In using zip codes, private insurers also assisted in keeping MAIF's non-standard rates down by essentially turning over the total market (good and bad drivers) in those inner-city areas. Because their loss costs were so exaggerated in these smaller territories, the typical premium charged for a standard policy offered by private insurers exceeded the cheapest non-standard premium offered by MAIF. So, in Baltimore City, we have the unintended consequence of good drivers subsidizing bad drivers in order to maintain some allusion of affordable rates for mandated coverages and to discourage an unacceptable surge in uninsured motorists.

This, in my opinion, is why we are here. It is almost certainly why Mayor Schmoke and a largely poor and black inner-city constituency affected by this gerrymandering of rating territories, has asked the Governor to establish this Commission. And it deserves to be addressed frankly and honestly regardless of the political realities which supposedly argue against it. The point,

as I see it, is not whether the practice is legal, but whether it is right. And we have, I believe, ignored that issue entirely.

IV. FINDINGS OF THE CHAIRMAN'S REPORT AS TO THE SOURCE OF THE PROBLEM IN BALTIMORE CITY IS UNSUPPORTED BY THE DATA PRESENTED

In order to deflect attention from territorial issues and the strong suggestion of redlining inner-city neighborhoods, insurers inundated the Commission with a blizzard of industry studies blaming high premiums on the high frequency of claims and over utilization of health providers in the City, particularly in soft tissue injury cases which, because of the lack of any objective findings (i.e. broken bones), are easily faked. However, these studies just don't support that conclusion.

First of all, on the macro level, the industry (as well as the chairman's report) relied heavily on a Rand Institute study comparing the ratio of so-called hard versus soft injury claims of all states to Michigan and New York. The premise being that in states such as Michigan and New York, who have verbal no-fault, neither the filing nor padding of false claims is likely since you

can only get your out-of-pocket costs. Pain and suffering or general damages are not allowed. In both states that ratio was .7 (i.e., 7 soft for every 10 hard injury claims) versus a ratio of 2.0 or twice as many soft injury as hard injury claims in Maryland.

This was a real surprise, not because Maryland's ratio was so high but because it was so low. Another study by the IRC had already indicated that the ratio of soft to hard injury claims nationally was 5 to 1. So where are these statistics coming from? Whatever the reason for the discrepancy (and none was ever offered), the study is clearly in error.¹

Next at the local level, the insurance industry sought to show that the driving force behind premium increases throughout the State and Baltimore City was the substantial increase of the number of claims, and particularly third-party personal injury and PIP claims relative to property damage claims. Those studies also find a direct correlation between frequency of claims and the percentage

¹ Auto Injuries: Claiming Behavior and its Impact on Insurance Costs, Insurance Research Council, September 1994, page 20

of attorney involvement. The City has a higher attorney involvement than the suburban Baltimore area (89% vs. 78%), explaining, so the argument goes, the almost 50% greater number of personal injury claims in the City. Moreover, again according to the industry, attorneys and health care providers have gamed the system using PIP benefits to inflate medical specials which in turn directly increase the non-economic damage portion of any settlement.

First of all, according to Exhibit 3 of the chairman's report, the frequency ratio of both personal injury and PIP claims per registered vehicle in the City versus the suburbs is 3 to 2 (i.e., 3 claims in the City for every 2 in the counties), there are also according to most recently available information from the Motor Vehicle Administration approximately 50% more licensed drivers per registered vehicle in the City (and many times that in some inner-city areas) than in the suburbs. Fifty percent more drivers equal a statistical probability of 50% more claims, but since loss costs are divided by the number of garaged vehicles within a territory

and not licensed drivers, it gives the impression the City's claim frequency ratio is out of line.² Secondly, over utilization of benefits is equally specious since severity (or amount paid per claim) is admittedly less in the City than in the suburbs.

So why has the chairman bought into these studies? Most likely for two reasons: (1) having rejected territorial for any meaningful or serious consideration, there is no where else to go; and (2) whether one buys into the industry's claim that inner-City claimants, attorneys and health providers are gaming the system, no one disputes that 75% of the average personal injury claim's economic loss are medical costs, and these costs have consistently out paced overall inflation including automobile insurance premiums

2

In any case, it is not the frequency or propensity of insureds to assert third-party claims that results in loss costs being charged back to the particular territory. The propensity to make a claim then, can only be shown as having a statistical correlation to increased premiums with regard to first-party claims. Again, Exhibit 3 to the majority report shows the same 3-to-2 ratio, or 50% more PIP claims being filed by City claimants than in the suburbs as is the case with third-party personal injury claims. This almost identical increase in both the number of claims brought against, as on behalf of, City residents strongly suggests that any increase in claim frequency is due to factors other than gaming the system such as already indicated the number of licensed drivers per registered vehicle.

over the last 15 years. So the chairman's report, whether unable or unwilling to deal with the peculiar problems of some Baltimore City residents in obtaining affordable automobile insurance rates, is now recommending a complete overhaul of the system state-wide by a combined elimination of mandatory protections, cost shifting and tort reform which it hopes will reduce premiums across the State by 20%.

V. THE RECOMMENDATIONS OF THE CHAIRMAN'S REPORT MAY WELL PRODUCE SOME REDUCTION IN PREMIUMS BUT CLEARLY NOT ENOUGH TO MEET ITS GOAL OR JUSTIFY THE MAJOR CHANGES CONTEMPLATED TO THE PRESENT OVERALL HEALTH CARE DELIVERY SYSTEMS

The centerpiece of the chairman's recommendations for lowering the cost of automobile insurance throughout the State, is the virtual elimination of PIP and tying medical payments to Medicare fee schedules for both first-party and third-party claims.

PIP has for all practical purposes been eliminated because pricing in the City makes it unaffordable; and for those who have a health plan, it is unnecessary. This is unfortunate since PIP coverage is relatively cheap everywhere else except for those same inner-City areas we are seeking to help. Indeed, according to the

chairman's report's Exhibit 1, PIP in Baltimore City can represent as much as 25% of the premium for MAIF insureds or over \$400.00 per year. Obviously, if PIP is completely optional, it is not going to be purchased by the typical inner-City resident who is also the most likely to be without health or disability insurance. The public health system, Medicaid and other public assistance programs will have to fill the void but at considerable expense to the taxpayers of the entire State. At least under the present system, mandatory PIP benefits took some of the financial burden off an already stressed health care system and had the distinct advantage of being paid for by the individual insureds themselves.

Indeed, this is one of the more intriguing inconsistencies of the chairman's report; namely why, in view of the oft-stated position that nothing should be done for City residents which would increase the burden in other areas of the State, the Commission recommends such drastic change not only in coverage, but how benefits will be delivered, throughout the State. Under these proposals,

not only will the insured's choice of medical treatment be seriously curtailed under the managed care or P.P.O. recommendation of the majority report, but limiting payments to Medicare schedules will amount to a 45% deductible or underpayment of the fair and reasonable charges for those treatments. The average charge for full medical coverage under PIP outside the City is \$40.00 per year. Why would anyone outside the City want to give that up in order to lower rates for some inner-city residents in Baltimore. Indeed, why would anyone outside of Baltimore City want to accept any of these direct and indirect burdens and costs being forced upon them by the limitation and/or restriction of present coverages for the vague promise that automobile insurance rates at least, will be reduced in the future by 20%.³

To achieve this, the Commission not only seeks to shift first-party medical cost (PIP) to the health care system (both public and

³Comments from insurers have already warned the Chairman of the inadvisability of setting such a large target in the Report due to their belief that the recommendations may not produce that kind of reduction in premiums.

private), but to limit payments to health care providers under both first-party and third-party liability coverage to the fee schedule for Medicare. This is a major shifting of medical costs from the automobile insurance industry to an already stressed health care system.

It was done in Pennsylvania with some success, to abate, according to the Rand Report, one of the highest over utilization of medical care in automobile insurance claims in the country. A report of the Budget & Taxation Committee of the Pennsylvania Legislature attributes one-half of the 5.7% average reduction in automobile insurance premiums in that State from 1989 to 1991 to the change. The question here is whether it is worth it, considering obvious differences between Maryland and Pennsylvania and the likely impact on employers and employees who are already dealing with the impact of dramatic increases in the costs of health insurance. The average automobile premium in Maryland may well be high at \$750.00 per year, but health insurance can easily cost that bi-monthly.

First of all, Pennsylvania's PIP was \$10,000.00 not \$2,500.00.

Secondly, it was and is mandatory. Thirdly, Pennsylvania's over utilization of medical benefits was the worst of any tort state in the country. Maryland's savings in medical costs, on the other hand, is certain to be no more than one-quarter of Pennsylvania's; and the recommended optional nature of PIP here, will have the desired breaking action on any alleged over utilization (as, indeed, it has in Baltimore City) by increasing the premium to the point where no one will purchase it.⁴

On the other hand, tinkering with anything that increases the burden on health care providers and insurers should have sure and certain benefits. For instance, one of the problems pointed out by the Pennsylvania Study is that while most health care providers can and do increase charges to other sources to make up the shortfall, increasingly that shortfall is being borne by employers through the

⁴MAIF testified that 65% of its policyholders had waived the optional part of PIP since the 1989 change in the law. However, none of the insurers answered the Chairman's written request to show how that partial elimination of mandatory PIP affected loss costs relative to 1989 levels.

payment of health insurance premiums for its own employees. Strong public policy considerations over the last decade have stressed a more favorable climate in the state for business. Increasing the burden on present and perspective employers in the state certainly runs contrary to that philosophy; and must be carefully weighed against a possible reduction in automobile insurance premiums of 1 or 2%.

What makes this all the more absurd is that according to a recent NAIC Report (see attached Exhibit 1), Maryland as a whole has one of the lowest loss cost ratios to premiums charged in the country. Maryland ranks 48th. Only two other states had lower loss cost ratios in 1992 (the last year statistics were available) down from a ranking of 22nd in the country only 5 years before in 1987. This is an impressive ranking considering Maryland's population density. I believe the appropriate expression is "if it ain't broke, don't fix it"; conversely, if something is obviously creating isolated pockets or inefficiencies in the system, deal

with it at the source.

VI. OTHER RECOMMENDATIONS

In addition to the centerpiece recommendation to shift medical cost to health care providers and insurers, the chairman's report makes a number of other recommendations which while not seriously intended to save vast sums in costs to the system, will definitely enhance the industry's negotiating strength or bargaining power over claimants and insureds.

One of the industry's favorites is the elimination of the collateral source rule. This rule only bars testimony in a court trial with regard to other sources of payment for the same damages (i.e., medical costs) being sought against the defendant in that particular case. The theory being (up to now) that if a plaintiff had the foresight to pay for additional coverage, it is he or she, and not the defendant or the one who caused the accident, who should get the benefit.

Indeed, testimony was received by the Commission that health insurance as well as health providers always put a lien in any case

involving third-party claims. Moreover, payments from any employer-sponsored health plan, for Medicare or Medicaid must be reimbursed whether the lien has been affirmatively asserted in writing or not; and if not reimbursed, the attorney in the case is legally responsible. Realistically PIP is the only collateral source for which this recommendation would apply, and it makes little sense to do it.

The purpose of the Commission is to reduce automobile insurance premiums in Baltimore City. If PIP has become unaffordable in the City, making it optional will eliminate that burden. If on the other hand PIP is seen as seed money in gaming the system by some unscrupulous claimants, attorneys and health providers in Baltimore City, the incentive is gone since most (if not all) will waive PIP coverage in those territories where premiums have inflated to unaffordable levels.

The collateral source rule is an exclusionary rule of evidence which applies to trials. It does not apply to the settlement of claims. Anything can and will be considered in arriving at a

proper settlement of a case, including the tremendous expense of going to trial. That is why only 1% of all claims go to trial. Indeed, 90% of all automobile tort cases are settled for under \$5,000.00. At those levels, the bargaining power is certainly with the insurance companies. Any additional threat over and above the prospect of going to court is overkill. Moreover, it makes no sense to deprive those 1% of all claimants who wind up in court to forfeit benefits they paid for to a liability carrier whose insured not only did not pay but caused the injury. More importantly, this 1% is neither the source nor answer to the ills allegedly plaguing the system and for which this Commission was formed.

Similarly the idea of Peer Review Organizations being established to determine medical necessity issues is absurd. First of all, insurers already have accountability measures available to them. There is no need then to establish yet another layer of medical bureaucracy to give the appearance of independence and legislative legitimacy to something that is bought and paid for by insurers. Moreover this one may well cost more than it saves

insurers. And if it operated as conceived in Pennsylvania, would cost the Insurance Commissioner's budget to increase substantially to undertake the required yearly audits. If we are going to audit anyone, it should be the insurers!

Finally, there is the one recommendation thrown in at the very last minute concerning the insurer's right to rescind the policy if, after the loss has already occurred, they can demonstrate that some fact in the original application was misrepresented (not even fraudulently), and with the benefit of 20-20 hindsight, they determine would have caused them to reject the application for insurance in the first place, regardless of policy term or length of continuous coverage for that insured.

Do we really trust this self-serving exercise to work? Insurers can already get out of contracts for fraudulent misrepresentations, determined by the courts based on legally objective standards. What they want here is a non-intentional standard based on their subjective appraisal after the fact. It is an open-ended, pre-emptory strike intended to force first and

third-party claimants to initiate legal proceedings, walk away or settle for nothing. It is also a trap for the unsophisticated and unwary.

VII. CONCLUDING REMARKS

In the best tradition of those believing the best defense is a good offensive, the insurance industry has mounted a particularly vicious attack on inner-City claimants, attorneys and health care providers. Premiums in the inner-City, we are told, are driven by non-existent injuries (i.e., soft tissue injuries), aggressively pursued by attorneys and over treated by doctors.

Well, their own statistics (and there are no other kind) do not bear this out. But no matter, they have once again successfully avoided any serious investigation into the real causes of this Commission's charge; namely to determine why automobile insurance premiums in Baltimore City (particularly the poor inner-City neighborhoods) are so out of line with the rest of the Baltimore Metropolitan Area.

A quick look at Motor Vehicle Administration statistics shows that Baltimore City has a 3-to-2 ratio of drivers to registered vehicles versus the suburban metropolitan areas. This is, not coincidentally, the same ratio of personal injury claims between the City and its suburbs. Yet the disparity between premiums between some areas of the City and its suburban cousins is not just a 1/3 more but rather as much as 4 times greater for the same coverages. Why? The answer, in large part, is a serious tightening of the territorial screws by insurers so that in some areas of the City, the question is not just affordability but availability. Again, not coincidentally, those areas are also the poorest black areas of the City. And just as Governor Schaefer before him heard the desperate pleas of a mostly middle class white constituency, Mayor Schmoke is now hearing a far more urgent plea from his own inner city black constituency because the price of near-parity with the county (premium-wise) for the better neighborhoods of the City, was to ratchet down territorial rating areas into zip codes, where in poorer black areas of the inner-

City, the number of licensed and non-licensed drivers versus the already small number of registered vehicles approaches 3 to 1; and the loss costs per vehicle from a relatively small number of accidents can and do send premiums through the roof.

The insidious nature of this tradeoff -- breaking down territorial rating pools into smaller and smaller units -- not only runs contrary to the essential concept of insurance in spreading risk, but also because geographic rating is based solely on loss cost experience of the insured vehicles in the territory, makes it impossible for good drivers to significantly benefit from their own responsible driving records. The upside, if we wish to seize it, is that the same technology (computers) that allows tracking information in smaller and smaller territorial units, also allows doing away with territories entirely, predicating premiums on individual experience. Indeed, this was the recommendation of a Joint White Paper of the Association of Insurance Brokers and the Auto Insurance Advocate Group back in 1989 -- expand territories into the metro-suburban areas to recognizing the spread of urban

density into these suburbs as well as relying more on technology to set premiums according to individual experience. Only in this way can Mayor Schmoke's plea to Governor Glendening and the Governor's charge to this Commission to seek an answer to lower auto insurance rates in Baltimore City be fairly addressed.

The chairman's report, however, citing political realities that would never allow enlargement of territorial rating pools into the surrounding political subdivisions of the City or force insurance companies to stop redlining inner-City neighborhoods, looks to reduce premiums by the simple expedient of reducing benefits and shifting costs.

The chairman's report recognizes the smoke and mirrors approach being taken to get the promised reductions in premiums, but justifies it on the basis that the consumers to be protected here are the ones paying the bills, not the few who may be injured and entitled to benefits sometime in the future. But even assuming this is a valid agreement, it does not justify limiting the search for cost reductions on the backs of consumers alone. Exhibit 2 to

this report shows that medical costs make up only 11% of our automobile insurance premium dollar, whereas property damage is 42% and the insurance industry's own administrative costs and expenses makes up 23% of the average premium. Neither were considered. Indeed, no one, except our Insurance Commissioner, is even allowed the proprietary information of the individual insurers that might be needed to determine whether there is any flexibility in those numbers.

But this is not about premium reductions for insurers, they have already expressed in writing their doubt as to the possibility of getting 20% in overall premium reductions out of the 11% medical costs component of the average automobile insurance premium dollar. This is about control. The insurers have complete control over the automobile repair business by sheer force of numbers or volume of business. Business that is given is business that can be taken away. What they do not have and want, is that same type of control over health care providers. But that kind of one-sided control is incompatible with a civil justice system. That is why the industry

wants no-fault. In a first-party system, they control. They become the gatekeepers. If that happens, both consumers -- the ones paying the bills and the ones giving up the benefits they thought the system would provide for their injuries -- lose. In every state that has ever tried it, the average automobile insurance premium has always wound up being more than under the conventional fault or tort system.⁵

One final thought, having ignored the specific problems of Baltimore City and opted for a statewide approach; and even assuming the Commission's recommendations produce a 20% reduction in automobile insurance premiums throughout the State, does anyone really believe that after the dust settles and inflation has done its job, no one is going to notice that automobile insurance

⁵Attached are two recent Wall Street Journal articles have been attached (Exhibits 3 and 4) to attest to the wisdom vel non of turning over control to insurers. In the first column is quoted as having "bet the farm" on tort reform only to discover that while automobile insurance premiums had risen an average of 8% per year nationally, they had risen 9.2% per year in Colorado. The other concerns a suit just filed in New York against Aetna by the medical doctors fired from the insurer's own HMO for refusing to allow Aetna to have the final say as to whether treatment is medically necessary and appropriate.

premiums in Baltimore City are still 3 and 4 times higher than in the rest of the State.

These figures are based on the latest available data from the Baltimore City Health Department, which shows that the average annual premium for a family of four in Baltimore City is \$1,200, compared with \$400 in the rest of the State.

The reason for this high premium is that the Baltimore City Health Department has a monopoly on the sale of life insurance policies in the city, and it charges a premium of 3 to 4 times as much as the private insurance companies.

The Baltimore City Health Department has a long history of monopoly, and it has been a source of controversy for many years. It was created in 1888, and it has since then been a source of controversy for many years.

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RECOMMENDATIONS:

A. Eliminate MAIF for standard risks.

MAIF has been the pressure relief valve that has allowed insurers to exclude undesirable neighborhoods. If as originally suggested, insurers were required to maintain market share within the City approximately equal to their overall market share within the State, they would be using every bit of the competitive ingenuity to seek and find the most desirable drivers within those same blighted inner-City areas they have ignored for years.

Technology today is such that the gathering of information on individual insureds is just as feasible as gathering it for large territories. Indeed loss costs which the industry admits is the only component in establishing territorial rates is just as easily determined by political subdivision, zip code or individual. The problem is that when those rating pools get too small both good and bad drivers suffer equally. And while MAIF's rates for non-

standard risks may even go up further due to the loss of those 3-year clean or standard risks the industry has forfeited, our purpose was not to alleviate the burden on bad drivers. To the degree we should, the elimination of mandatory coverages will assist even them. Insureds rejected by an insurance company must be given written notice as to the reason for the rejection. This rejection can be appealed to the Insurance Commissioner, since only the Maryland Insurance Administration can review underwriting guidelines.

- B. Make full PIP mandatory; but for this coverage only, the geographic territory should be the entire State.**

Since PIP makes up less than 10% of the total premium and there are 10 times the number of registered vehicles in the whole State versus Baltimore City, pooling loss cost statewide for this mandatory coverage only, would not have a significant upward effect on premiums while making them affordable for those poor inner-City residents who need it the most. These are precisely the families PIP benefits were intended to help. They have no health benefits

and marginal jobs at best with no paid sick leave. Until they can settle a third-party claim and/or just get back on their feet, PIP was intended to prevent these people from falling into the public health system and other public assistance programs at the taxpayers' expense.

C. Property damage liability should not be mandatory.

While there are significant public policy reasons for mandatory coverage with respect to personal injury claims, either first-party or third-party, there are no correspondingly compelling reasons to legally require automobile insurance for property damage. The property damage payments of private automobile insurance is 42% on average of our premium, and the minimum mandatory coverage for third-party liability protection is over 16% of that amount. In other words, it is more than 50% higher than the average premium for full PIP benefits. If mandatory coverages should be eliminated to make automobile insurance more affordable, property damage, not bodily injury mandated coverages, is where we should start.

- D. In addition to the fraud provisions of H.B.923, the industry should subsidize a traffic investigative unit in each political subdivision.

Police departments used to investigate all traffic accidents within minutes of their occurrence and file a report which was usually accepted (absent extraordinary circumstances) by the parties and liability carrier as the definitive statement of fault. It also established a credible independent source as to the nature and extent of injuries. Nothing gets cases settled quicker, closes opportunities for fraud, and lessens the need for attorney involvement in the mind of the prospective claimant(s) than an official statement or report confirming responsibility for the accident. This in turn saves a considerable expense in the handling of claims which adds 23% on average to our automobile insurance premium.

- E. Any person licensed by the State determined to have participated in a fraudulent claim and/or used unlawful means in the procuring or handling of such claims, should in addition to all other remedies available against them, lose their license to practice or otherwise do business within the State.

There is credible evidence supporting the view that licensed persons are not dealt with harshly enough by various licensing boards or associations having authority over them. There should be a law which clearly states that any finding of wrongful conduct in advancing insurance fraud by such licensed person mandates immediate rescission of that license.

| STATE | 1992 | | | 1991 | | | 1990 | | | 1989 | | | 1988 | | | 1987 | | |
|---------------|------|------|----------|------|------|----------|-------|------|----------|-------|------|----------|-------|------|----------|-------|------|----------|
| | LOSS | RANK | STATE/CW | LOSS | RANK | STATE/CW | LOSS | RANK | STATE/CW | LOSS | RANK | STATE/CW | LOSS | RANK | STATE/CW | LOSS | RANK | STATE/CW |
| Alabama | 69.9 | 37 | 0.96 | 76.1 | 31 | 0.96 | 78.9 | 38 | 0.93 | 79.2 | 33 | 0.96 | 76.7 | 30 | 0.96 | 77.2 | 33 | 0.94 |
| Alaska | 68.0 | 44 | 0.93 | 82.0 | 16 | 1.03 | 82.6 | 27 | 0.98 | 70.8 | 49 | 0.85 | 66.8 | 51 | 0.83 | 65.6 | 51 | 0.80 |
| Arizona | 70.4 | 34 | 0.97 | 74.6 | 37 | 0.94 | 84.6 | 23 | 1.00 | 82.1 | 24 | 0.99 | 82.4 | 16 | 1.03 | 84.8 | 18 | 1.01 |
| Arkansas | 73.6 | 27 | 1.01 | 76.0 | 32 | 0.96 | 86.8 | 17 | 1.03 | 79.8 | 30 | 0.96 | 73.3 | 39 | 0.91 | 74.9 | 39 | 0.91 |
| California | 63.2 | 49 | 0.87 | 66.3 | 50 | 0.84 | 76.3 | 41 | 0.90 | 75.3 | 40 | 0.91 | 82.0 | 18 | 1.02 | 87.1 | 10 | 1.06 |
| Colorado | 72.7 | 29 | 1.00 | 85.9 | 10 | 1.08 | 93.8 | 9 | 1.11 | 89.9 | 12 | 1.08 | 81.2 | 19 | 1.01 | 83.4 | 20 | 1.01 |
| Connecticut | 77.3 | 12 | 1.06 | 85.3 | 12 | 1.08 | 86.2 | 18 | 1.02 | 86.7 | 13 | 1.05 | 87.9 | 7 | 1.09 | 84.8 | 17 | 1.03 |
| Delaware | 79.5 | 9 | 1.09 | 87.6 | 8 | 1.10 | 95.6 | 5 | 1.13 | 103.1 | 2 | 1.24 | 102.3 | 2 | 1.27 | 106.6 | 3 | 1.29 |
| Dist. of Col. | 73.1 | 28 | 1.00 | 81.8 | 17 | 1.03 | 81.9 | 30 | 0.97 | 85.1 | 15 | 1.03 | 74.0 | 35 | 0.92 | 79.2 | 27 | 0.96 |
| Florida | 70.7 | 33 | 0.97 | 72.6 | 41 | 0.92 | 71.2 | 50 | 0.84 | 72.0 | 47 | 0.87 | 73.7 | 38 | 0.92 | 77.4 | 31 | 0.94 |
| Georgia | 74.1 | 23 | 1.02 | 72.0 | 43 | 0.91 | 77.5 | 40 | 0.92 | 76.8 | 38 | 0.93 | 74.8 | 34 | 0.93 | 78.1 | 30 | 0.95 |
| Hawaii | 69.4 | 39 | 0.95 | 87.7 | 7 | 1.11 | 109.8 | 1 | 1.30 | 90.2 | 10 | 1.09 | 85.3 | 9 | 1.06 | 77.3 | 32 | 0.94 |
| Idaho | 70.2 | 36 | 0.96 | 76.5 | 30 | 0.96 | 81.9 | 29 | 0.97 | 72.1 | 46 | 0.87 | 73.2 | 40 | 0.91 | 71.8 | 45 | 0.87 |
| Illinois | 76.7 | 16 | 1.05 | 75.0 | 35 | 0.95 | 74.8 | 44 | 0.89 | 74.7 | 44 | 0.90 | 70.8 | 47 | 0.88 | 68.8 | 50 | 0.83 |
| Indiana | 72.6 | 30 | 1.00 | 77.6 | 27 | 0.98 | 80.1 | 35 | 0.95 | 85.7 | 14 | 1.03 | 75.7 | 32 | 0.94 | 83.8 | 19 | 1.02 |
| Iowa | 69.5 | 38 | 0.95 | 74.7 | 36 | 0.94 | 83.0 | 26 | 0.98 | 82.9 | 22 | 1.00 | 82.4 | 15 | 1.03 | 71.0 | 41 | 0.86 |
| Kansas | 76.4 | 18 | 1.05 | 74.0 | 39 | 0.93 | 75.1 | 43 | 0.89 | 75.1 | 41 | 0.91 | 70.9 | 45 | 0.88 | 71.3 | 46 | 0.86 |
| Kentucky | 77.0 | 14 | 1.06 | 83.2 | 15 | 1.05 | 93.5 | 10 | 1.11 | 89.9 | 11 | 1.08 | 86.9 | 8 | 1.08 | 80.2 | 24 | 0.97 |
| Louisiana | 70.4 | 35 | 0.97 | 79.6 | 23 | 1.00 | 85.9 | 19 | 1.02 | 82.1 | 23 | 0.99 | 75.5 | 33 | 0.94 | 87.0 | 12 | 1.05 |
| Maine | 62.0 | 50 | 0.85 | 67.9 | 48 | 0.86 | 74.5 | 45 | 0.88 | 81.6 | 25 | 0.98 | 82.3 | 17 | 1.02 | 87.1 | 11 | 1.06 |
| Maryland | 63.7 | 48 | 0.87 | 67.5 | 49 | 0.85 | 74.2 | 47 | 0.88 | 74.7 | 43 | 0.90 | 72.6 | 42 | 0.90 | 81.6 | 22 | 0.99 |
| Massachusetts | 68.9 | 41 | 0.95 | 80.8 | 21 | 1.02 | 87.5 | 15 | 1.04 | 84.8 | 16 | 1.02 | 82.7 | 14 | 1.03 | 85.9 | 15 | 1.04 |
| Michigan | 68.3 | 43 | 0.94 | 76.6 | 28 | 0.97 | 102.1 | 3 | 1.21 | 93.7 | 8 | 1.13 | 83.7 | 11 | 1.04 | 112.2 | 2 | 1.36 |
| Minnesota | 76.2 | 19 | 1.05 | 76.5 | 29 | 0.96 | 79.6 | 37 | 0.94 | 81.3 | 26 | 0.98 | 66.9 | 50 | 0.83 | 69.2 | 40 | 0.84 |
| Mississippi | 67.9 | 45 | 0.93 | 75.6 | 33 | 0.95 | 80.0 | 36 | 0.95 | 78.9 | 34 | 0.95 | 80.3 | 22 | 1.00 | 89.5 | 10 | 1.08 |
| Missouri | 72.0 | 31 | 0.99 | 75.3 | 34 | 0.95 | 80.6 | 33 | 0.96 | 77.2 | 37 | 0.93 | 73.7 | 37 | 0.92 | 70.8 | 48 | 0.86 |
| Montana | 76.6 | 17 | 1.05 | 72.1 | 42 | 0.91 | 73.2 | 49 | 0.87 | 66.9 | 51 | 0.81 | 68.4 | 49 | 0.85 | 74.0 | 42 | 0.90 |
| Nebraska | 74.3 | 22 | 1.02 | 81.7 | 19 | 1.03 | 81.2 | 32 | 0.96 | 79.7 | 31 | 0.96 | 80.0 | 23 | 1.00 | 76.4 | 45 | 0.93 |
| Nevada | 80.8 | 8 | 1.11 | 89.4 | 5 | 1.13 | 94.9 | 6 | 1.12 | 84.6 | 17 | 1.02 | 79.6 | 26 | 0.99 | 88.9 | 13 | 1.08 |

EXHIBIT

Table 7. STATE LIABILITY LOSS RATIO DATA FOR PRIVATE PASSENGER AUTO
1987 - 1992

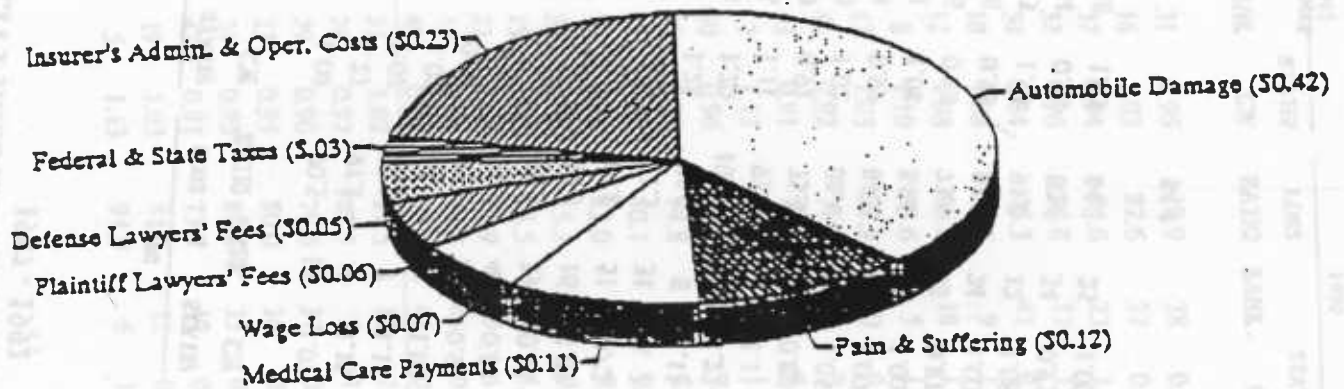
| STATE | 1992 | | | 1991 | | | 1990 | | | 1989 | | | 1988 | | | 1987 | | |
|----------------|------------|------|----------|------------|------|----------|------------|------|----------|------------|------|----------|------------|------|----------|------------|------|----------|
| | LOSS RATIO | RANK | STATE/CW | LOSS RATIO | RANK | STATE/CW | LOSS RATIO | RANK | STATE/CW | LOSS RATIO | RANK | STATE/CW | LOSS RATIO | RANK | STATE/CW | LOSS RATIO | RANK | STATE/CW |
| New Hampshire | 67.0 | 47 | 0.92 | 79.6 | 22 | 1.00 | 90.5 | 13 | 1.07 | 96.5 | 6 | 1.16 | 94.0 | 4 | 1.17 | 96.7 | 4 | 1.17 |
| New Jersey | 87.7 | 3 | 1.20 | 100.8 | 2 | 1.27 | 97.2 | 4 | 1.15 | 111.3 | 1 | 1.34 | 136.6 | 1 | 1.70 | 145.1 | 1 | 1.76 |
| New Mexico | 81.4 | 6 | 1.12 | 84.8 | 14 | 1.07 | 94.0 | 7 | 1.11 | 99.2 | 4 | 1.20 | 99.2 | 3 | 1.24 | 94.6 | 6 | 1.15 |
| New York | 83.1 | 4 | 1.14 | 86.0 | 9 | 1.08 | 84.7 | 21 | 1.00 | 80.5 | 27 | 0.97 | 73.1 | 41 | 0.91 | 72.4 | 43 | 0.88 |
| North Carolina | 74.1 | 25 | 1.02 | 74.3 | 38 | 0.94 | 82.2 | 28 | 0.97 | 75.3 | 39 | 0.91 | 79.9 | 24 | 1.00 | 86.7 | 14 | 1.05 |
| North Dakota | 73.9 | 26 | 1.01 | 70.6 | 45 | 0.89 | 74.4 | 46 | 0.88 | 67.8 | 50 | 0.82 | 70.6 | 48 | 0.88 | 74.7 | 40 | 0.91 |
| Ohio | 67.7 | 46 | 0.93 | 69.0 | 47 | 0.87 | 78.3 | 39 | 0.93 | 77.2 | 36 | 0.93 | 77.9 | 28 | 0.97 | 79.9 | 25 | 0.97 |
| Oklahoma | 81.1 | 7 | 1.11 | 84.9 | 13 | 1.07 | 87.0 | 16 | 1.03 | 80.2 | 29 | 0.97 | 80.4 | 21 | 1.00 | 78.6 | 29 | 0.95 |
| Oregon | 60.5 | 51 | 0.83 | 60.8 | 51 | 0.77 | 68.8 | 51 | 0.72 | 74.9 | 42 | 0.90 | 74.0 | 36 | 0.92 | 74.4 | 41 | 0.90 |
| Pennsylvania | 78.3 | 11 | 1.07 | 78.2 | 25 | 0.99 | 81.5 | 31 | 0.7 | 95.4 | 7 | 1.15 | 91.2 | 6 | 1.14 | 94.0 | 7 | 1.16 |
| Rhode Island | 74.7 | 21 | 1.03 | 101.2 | 1 | 1.28 | 94.0 | 8 | 1.11 | 101.4 | 3 | 1.22 | 93.8 | 5 | 1.17 | 95.3 | 5 | 1.16 |
| South Carolina | 78.8 | 10 | 1.08 | 95.1 | 4 | 1.20 | 102.9 | 2 | 1.22 | 99.1 | 5 | 1.20 | 84.1 | 10 | 1.05 | 85.4 | 16 | 1.04 |
| South Dakota | 91.7 | 1 | 1.26 | 88.0 | 6 | 1.11 | 93.3 | 11 | 1.11 | 80.3 | 28 | 0.97 | 76.7 | 31 | 0.96 | 76.4 | 36 | 0.93 |
| Tennessee | 70.8 | 32 | 0.97 | 72.6 | 40 | 0.92 | 75.3 | 42 | 0.89 | 79.4 | 32 | 0.96 | 83.0 | 12 | 1.03 | 81.7 | 21 | 0.99 |
| Texas | 77.2 | 13 | 1.06 | 81.2 | 20 | 1.02 | 88.4 | 14 | 1.05 | 83.3 | 21 | 1.00 | 79.8 | 25 | 0.99 | 79.1 | 28 | 0.96 |
| Utah | 75.6 | 20 | 1.04 | 78.3 | 24 | 0.99 | 84.7 | 20 | 1.00 | 84.2 | 18 | 1.02 | 77.7 | 29 | 0.97 | 79.7 | 26 | 0.97 |
| Vermont | 81.9 | 5 | 1.12 | 85.6 | 11 | 1.08 | 84.6 | 22 | 1.00 | 92.8 | 9 | 1.12 | 82.7 | 13 | 1.03 | 87.0 | 13 | 1.05 |
| Virginia | 69.1 | 40 | 0.95 | 69.5 | 46 | 0.88 | 73.6 | 48 | 0.87 | 74.3 | 45 | 0.90 | 72.4 | 43 | 0.90 | 75.2 | 38 | 0.91 |
| Washington | 74.1 | 24 | 1.02 | 77.8 | 26 | 0.98 | 84.2 | 24 | 1.00 | 83.5 | 20 | 1.01 | 78.6 | 27 | 0.98 | 77.1 | 34 | 0.93 |
| West Virginia | 88.4 | 2 | 1.21 | 98.3 | 3 | 1.24 | 91.0 | 12 | 1.08 | 83.8 | 19 | 1.01 | 81.2 | 20 | 1.01 | 81.3 | 23 | 0.99 |
| Wisconsin | 68.4 | 42 | 0.94 | 71.6 | 44 | 0.90 | 80.6 | 34 | 0.95 | 78.1 | 35 | 0.94 | 72.3 | 44 | 0.90 | 71.9 | 44 | 0.87 |
| Wyoming | 76.8 | 15 | 1.05 | 81.7 | 18 | 1.03 | 84.2 | 25 | 1.00 | 71.7 | 48 | 0.86 | 70.8 | 46 | 0.88 | 75.6 | 37 | 0.92 |
| COUNTRYWIDE | 72.9 | | | 79.3 | | | 84.4 | | | 82.9 | | | 80.3 | | | 82.5 | | |

SOURCE: National Association of Insurance Commissioners.

See Appendix, pages 216-277, for premium and loss data.

The Automobile Insurance Premium Dollar 1991

(Losses, other payments, and investment income total \$1.09 for every dollar of premium taken in.)



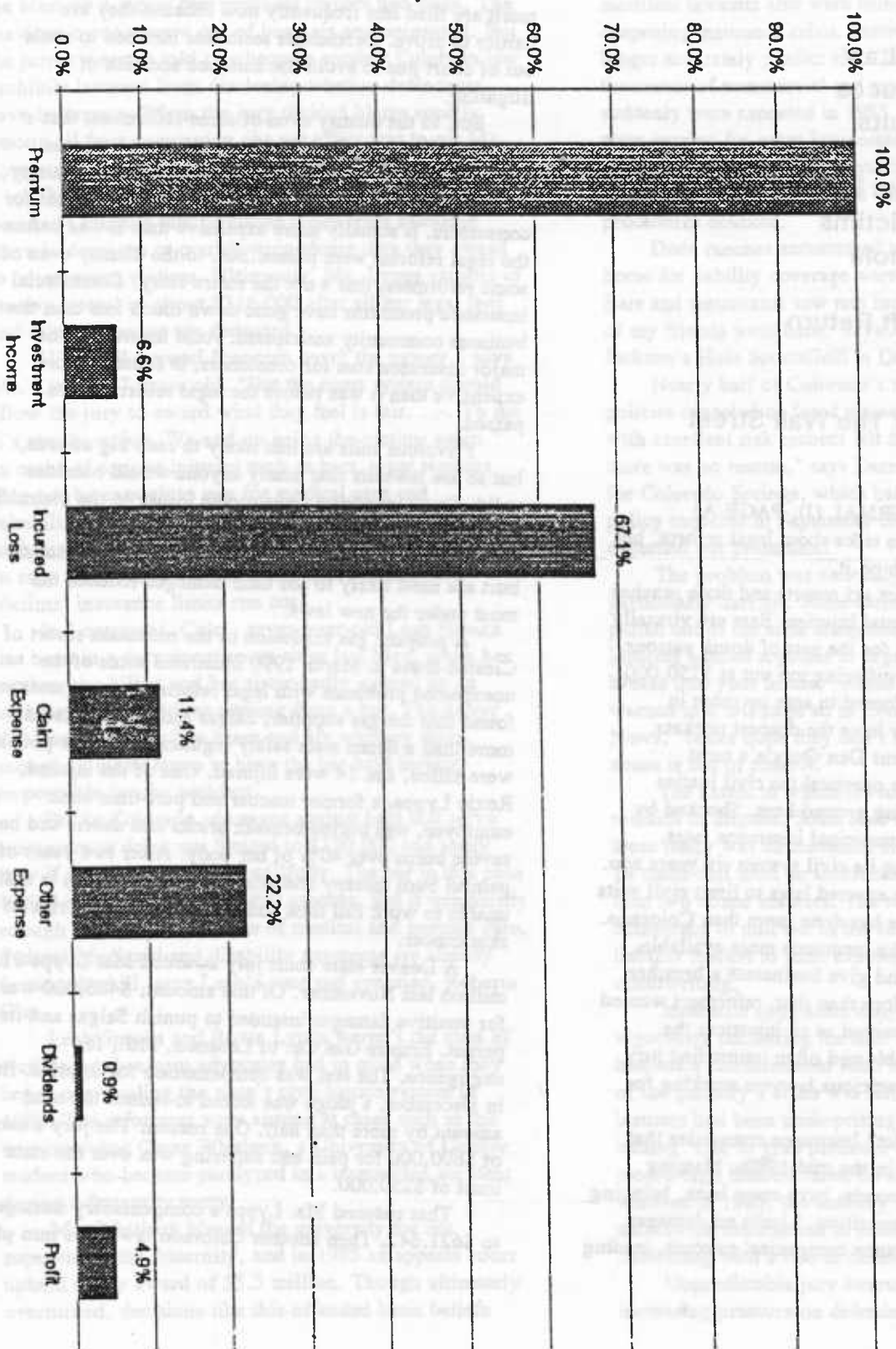
Source: "Where the Premium Dollar Goes," Insurance Information Institute, 1990, Sean F. McGoey, Ph.D., CPCU, Senior Vice President & Economist and *The Fact Book 1991: Property/Casualty Insurance Facts*, Insurance Information Institute, from information compiled by A.M. Best Co., Inc.

EXHIBIT

2

Claims and related expenses account for the vast majority of the insurance premium dollar

PERSONAL AUTOMOBILE INSURANCE 1993 Cost Structure Countrywide Industry Results



SOURCE: AM Best Aggregates & Averages

THE WALL STREET JOURNAL.

Tort Reform Test:

Overhaul of Civil Law
In Colorado Produces
Quite Mixed Results

Frivolous Litigants Win Less,
But Some Real Victims
Are Not Made Whole

Insurers Who Left Return

By Milo Geyelin

Staff Reporter of The Wall Street

Journal xx

03/03/92

WALL STREET JOURNAL (J), PAGE A1

DENVER -- Everyone talks about legal reform, but Colorado has bet the ranch on it.

State laws here protect ski resorts and dude ranches from lawsuits over accidental injuries. Bars are virtually immune from legal blame for the acts of drunk patrons. Jury awards for pain and suffering top out at \$250,000. And defendants can't be forced to ante up more in damages just because they have the deepest pockets.

Some of Vice President Dan Quayle's most controversial proposals to overhaul the civil justice system have found a testing ground here. Shocked by soaring commercial and municipal insurance rates, Colorado began reforming its civil system six years ago. Though many states have enacted laws to limit civil suits and damage awards, none has done more than Colorado.

The idea was to make insurance more available, knock down premiums and give businesses a breather from costly litigation. More than that, reformers wanted to redress what they perceived as an injustice: the prevalence of unpredictable and often unjustified jury awards spurred on by avaricious lawyers working for contingency fees.

So what's the verdict? Insurance companies that fled Colorado in droves in the mid-1980s, blaming lawyers and high jury awards, have come back, bringing with them increased competition. Limits on damages have helped lower insurance companies' payouts, leading

to some drops in insurance rates. Lawsuits of dubious merit are filed less frequently now because they are harder to prove. Defendants seem less inclined to settle out of court just to avoid the nuisance and risk of litigating.

But, to the dismay even of some reformers, that's not the entire story. Commercial insurance premiums have gone down much less than the business community anticipated. Auto insurance, the major insurance cost for consumers, is actually more expensive than it was before the legal reforms were passed. But, to the dismay even of some reformers, that's not the entire story. Commercial insurance premiums have gone down much less than the business community anticipated. Auto insurance, the major insurance cost for consumers, is actually more expensive than it was before the legal reforms were passed.

Frivolous suits are less likely to reap big awards, but so are lawsuits that nearly anyone would consider valid. Cases involving catastrophic injury to the plaintiff and egregious wrongdoing by the defendant are highlighting the flip side of reform: The most seriously hurt are most likely to see their damages reduced the most under the new laws.

A propane gas explosion in the mountain resort of Crested Butte in March 1990 illustrates some of the unexpected problems with legal reform. Investigators found that the gas supplier, Salgas Inc., had violated more than a dozen state safety regulations. Three people were killed, and 14 were injured. One of the injured, Roxie Lypps, a former teacher and part-time bank employee, was buried beneath bricks and debris and had severe burns over 40% of her body. After two years of painful burn therapy and skin grafts, Ms. Lypps is still unable to work full time and faces an increased risk of skin cancer.

A Denver state court jury awarded Ms. Lypps \$1.5 million last November. Of that amount, \$486,000 was for punitive damages intended to punish Salgas and its parent, Empire Gas Co. of Lebanon, Mo., for negligence. The rest was compensation for injuries. But in December, a judge was forced to reduce the total amount by more than half. One reason: The jury's award of \$600,000 for pain and suffering was over the state limit of \$250,000.

That reduced Ms. Lypps's compensatory damages to \$621,642. Then another Colorado law came into play:

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3

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Individual defendants in civil suits can't be forced to pay more than their share of the blame when others at fault have no money. In this case, Empire and Salgas blamed the blast on a repair two previous owners had made. The previous owners were out of business and uninsured. But the jurors weren't told this because another Colorado law prohibits lawyers from disclosing whether defendants have insurance. When the jury divided blame equally among all four companies, the net effect was to cut Ms. Lypps's remaining compensation to \$310,822.

That, in turn, knocked down the punitive damages because Colorado law prohibits juries from assessing more in damages to punish wrongdoers than they award to compensate victims. Ultimately, Ms. Lypps expects to receive a total of about \$316,000 after all her legal fees and other expenses are deducted.

"I'm well beyond {concern over} the money," says Ms. Lypps, 47 years old. "But the court system should allow the jury to award what they feel is fair. . . . To me it's totally unfair. We end up being the victims again." In cases of serious injuries such as hers, what remains may not be enough to pay for medical care and rehabilitation. Because defendants and their insurers are now insulated from huge damages, costs are transferred to state and federally funded health programs when victims' insurance limits run out.

In Longmont, Colo., seven-year-old Leah Speaks has been in a permanent coma since last May, when her mother was killed and her sister badly injured by an uninsured drunk driver coming from a bar. The driver had knocked back five beers and six whiskey shots, enough in many states to have the bar held legally responsible for the accident.

But in Colorado, damages against bars that serve customers to drink are limited to \$150,000 and apply only if the bartender acted willfully. The bar in this case settled out of court for the full amount. But it was hardly enough to pay for a lifetime of medical and nursing care. Federal Medicaid and disability payments are already footing the bill, says Leah's aunt and guardian, Roberta Gies.

Leah Speaks and Roxie Lypps weren't the kind of victims legal-reform advocates had in mind when they began overhauling the state's civil justice system in 1986. The reformers were aiming at cases such as the one involving Oscar Whitlock, a University of Denver student who became paralyzed in a trampoline accident during a fraternity party.

Mr. Whitlock blamed the university for not supervising the fraternity, and in 1985 an appeals court upheld a jury award of \$5.3 million. Though ultimately overturned, decisions like this offended basic beliefs

here that individuals must bear responsibility for their own risks.

Such multimillion-dollar jury awards for seemingly meritless lawsuits also were being blamed for Colorado's deepening insurance crisis. Insurers said they could no longer accurately predict risk. Throughout the state, thousands of commercial and municipal liability policies suddenly were canceled in 1985. Rates and deductibles were soaring for other businesses and professions, while coverage declined. Rural physicians stopped delivering babies when rates for doctors who performed obstetric procedures doubled.

Dude ranches accustomed to paying \$20 a year per horse for liability coverage were suddenly paying \$400. Bars and restaurants saw rate increases of 600%. "A lot of my friends went bare," says John Ziegler, owner of Jackson's Hole SportsGrill in Denver.

Nearly half of Colorado's municipalities had their policies canceled or faced major restrictions. Even cities with excellent risk records felt the brunt. "Basically, there was no reason," says Darrell Barnes, risk manager for Colorado Springs, which had its \$5 million liability policy canceled in September 1985. "Our claims never exceeded our premiums."

The problem was national, but Colorado seemed particularly hard hit. Some carriers, blaming lawyers, pulled out of the state altogether. Business groups and insurers banded together to urge reform. "If someone breaks into your house," Aetna Life & Casualty Co. warned in a full-page ad in Denver's Rocky Mountain News, "better hope they don't break a leg, Lawsuit abuse is out of control."

The extent to which lawsuits actually were to blame remains in dispute. Some state officials question whether there really was an insurance crisis. Colorado is among 18 states that filed an antitrust suit in 1988 against more than two dozen insurers. The suit alleged an industry conspiracy to pull out of the commercial and municipal liability market to limit exposure after years of risky underwriting.

Insurance companies deny the charges and are vigorously contesting the suit. But former Colorado insurance commissioner John Kezer says that at least part of the industry's crisis was self-inflicted. For years, insurers had been underpricing policies and "low-balling" risk to grab premium dollars and invest at record-high interest rates, he says. When those rates tumbled in 1985, the industry's cash surplus shrank. A nationwide contraction in insurance availability ensued, coinciding with a rise in claims.

Unpredictable jury awards exacerbated the problem, increasing pressure on defendants to settle cases, says

former University of Denver law school dean Edward A. Dauer, chairman of a task force that investigated the crisis. Colorado was not experiencing a "litigation explosion," he says, but the insurance industry "needed predictability in risk."

Legal reform became the clarion call, and Colorado's conservative, business-oriented legislature swiftly embraced it. Legislators enacted 68 laws over six years.

Lawyers became more reluctant to bring difficult-to-prove cases. Juries and judges became more skeptical of injury claims and angry about lawsuit abuse. "Juries who sit on auto-accident cases see themselves as more likely the victim of a lawsuit than the victim of an accident," says William Keating, a Denver plaintiffs' lawyer.

Injury cases, as a result, have become more expensive to pursue and difficult to prove, says another plaintiffs' lawyer, Gerald McDermott. "That in and of itself is going to result in some cases that have some merit not being pursued," he argues. For cases involving less than catastrophic injuries, jury verdicts and settlements have dropped.

The laws have most directly helped professions and businesses that were singled out for special protection. Malpractice rates at physician-owned COPIC Insurance Co., Colorado's largest medical malpractice insurer, have dropped 17% since 1988, the year Colorado overhauled its malpractice law to limit liability and damages for doctors.

But, in general, the overall impact on the insurance policyholder has not been great. The insurers have benefited more than individual consumers. Industry losses over the past six years have fallen 30%, while general commercial liability premiums have dropped only 9% overall, according to A.M. Best Co., an independent data gatherer.

At Breiner Construction Co., a small contractor in Denver, commercial liability rates dropped 15% in 1990 — the first drop after six years of increases. "It has come down," says Breiner's president, Rosemary Breiner, "but not as much as it went up."

State regulators haven't been able to determine the impact that legal reform has had on lowering insurance rates because commercial insurers don't have to reveal this information in public disclosures. Moreover, Colorado has benefited from an upswing nationally in the insurance industry's business cycle. That alone was largely responsible for bringing back insurers to the state, regulators say.

Meanwhile, automobile insurance rates, a major bone of contention with Colorado residents, have

continued to rise steadily. Between 1988 and 1990, rates rose 8% on the average, nationwide. But in Colorado, they rose 9.2% in the same period. "That's what's creating some animosity on the part of myself and some others," grouses Assistant Senate Majority Leader Ray Powers, a conservative Republican who, like some other powerful legislators, is having second thoughts about continued reform efforts.

Highly publicized accidents such as the one at Crested Butte and another at Berthoud Pass, near Denver, are contributing to legislators' caution. In the Berthoud Pass incident, a state road worker clearing fallen rocks from the pass shoved a 6.7-ton boulder down the mountain in 1987, thinking it would roll just a few feet. The rock crashed into a tour bus 725 feet below, killing eight and injuring 25.


One tourist, Marcus Lang, who was blinded and brain-damaged, lingered in Denver General Hospital for almost a year before he went home to West Germany and died. Under Colorado's governmental immunity law, toughened in 1986 and upheld by the Colorado Supreme Court last month, the state's total liability for all the victims combined couldn't exceed \$400,000. Mr. Lang's medical bills alone exceeded \$328,000. (Mr. Lang's estate hasn't received anything as yet from Colorado because the case is still being litigated.)

Many Colorado residents were appalled. "I think we did need legal reform, but now the pendulum has begun to swing back, so the person who needs compensation can get it," says Republican House Majority Leader Scott McInnis, an early reform supporter who now is backing off.

One bill he is backing this year would increase the potential liability of government entities. Another would create an office of consumer advocate to more aggressively challenge insurance-industry rate requests. Continued legal reform also now faces a more skeptical legislature, says Republican House Speaker Chuck Berry.

Opposition is stiff for a bill the river rafting industry is pushing to protect itself against suits stemming from whitewater accidents, including "getting lost or failing to return." There is also little enthusiasm for a law auto insurers are pushing to reduce the minimum insurance coverage required in Colorado. Auto insurers are also promoting a companion bill to limit accident victims' ability to sue over injuries.

Two years ago, identical auto-insurance proposals were under debate when Dorothy Powers, the wife of the assistant Senate majority leader, showed up in the state capitol to lobby in opposition. Encased in a body cast to fuse her own fractured spine from an auto accident, Mrs.

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Doctors Sue Aetna Over HMO Dispute

NEW YORK (AP) — A group of hospital anesthesiologists filed a lawsuit against Aetna Life and Casualty Insurance Co. yesterday, alleging that Aetna threatened to get them fired if they didn't agree to give up final say on patient care.

The federal-court suit says that when the doctors attempted to negotiate changes in their agreements with Aetna's health-maintenance organization, Aetna threatened to stop doing business with the hospitals where the anesthesiologists worked, thus putting their jobs in jeopardy.

The doctors claim the practice violates antitrust laws and is detrimental to the care of patients enrolled in Aetna's New York HMO.

Yesterday's suit, filed in U.S. District Court in New York, was filed on behalf of 20 anesthesiologists at hospitals on suburban Long Island that negotiated contracts with Aetna Health Plans of New York Inc.

The suit seeks an injunction and compensatory damages.

Aetna denied the charges.

"There is absolutely no merit to the charges alleged in this suit," said Sal Foti, an Aetna spokesman.

EXHIBIT

4

CITIZEN ACTION'S SUPPLEMENTARY COMMENTS ON THE PRELIMINARY REPORT OF THE GOVERNOR'S COMMISSION ON BALTIMORE CITY AUTOMOBILE INSURANCE RATE REDUCTION

con·sen·sus \ken-'sen(t)-ses\ n [L, fr. consensus, pp. of consentire] 1 : group solidarity in sentiment and belief 2 a : general agreement : UNANIMITY b : the judgment arrived at by most of those concerned

Due to the inclusion of a number of recommendations which Citizen Action views as anti-consumer, we do not offer our support for the full report. The term "consensus" does not apply to the *Preliminary Report of the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction*. In fact, use of this term to describe the Commission's report is misleading and misrepresents the nature of the Commission proceedings and of the process by which the report was created. Although no vote was taken by the Chairman, it was clear that unanimity or "consensus" did not exist. There was no "group solidarity in sentiment and belief nor was there a "judgment arrived at by most of those concerned."

Citizen Action supports recommendations to regulate territorial rating practices in order to eliminate the unfair and disproportionate economic impact that current practices have upon the African American and low income communities in Baltimore City. With the exception of this recommendation, insurance industry market practices were not addressed. We feel that this limited the effectiveness of the Commission and set an anti-consumer tone which we strongly oppose. If a vote were taken on this report, Citizen Action would offer a "nay."

Citizen Action agrees with the author of the report that "there is no room in the system for fraud." We strongly support reducing insurance fraud whether it is performed by claimants, doctors, lawyers or insurance industry employees. On the other hand, we oppose reducing or denying consumers benefits in order to reduce premiums, and we oppose recommendations which would shift costs to health insurance. In addition, we oppose recommendations which would allow insurers to collect premiums without having to pay full benefits.

According to the National Association of Insurance Commissioners December 1993 *Auto Insurance Database Report*, Maryland auto insurance companies enjoyed a 1992 statewide liability loss ratio of 63.7 for private passenger auto insurance ranking 48th in the country. This places Maryland well below the 1992 countrywide average of 72.9 (Table 7, pp14-15). Only two other states pay out less of their premium dollars to claimants than does Maryland. The same report shows that the liability loss ration for Maryland actually dropped from 81.6 with a ranking of 22nd in 1987 to the 1992 loss ratio cited above.

In 1987 Maryland insurance companies paid out nearly 82 cents for every premium dollar collected. In 1992 that number fell to nearly 64 cents. Either insurance companies have become grossly inefficient, wasting the premiums they collect, or they have become amazingly profitable.

Obviously, the insurance industry in Maryland has managed not only to decrease its liability loss ratio, but to spend out less and less of the premium dollar to consumers over the 6 years for which data is available. Yet, the Chairman of this commission chose "to make(s) no additional recommendation regarding market reform." This limited the commission to three areas (1) reducing fraud (2) reducing "underlying loss costs" and (3) reducing benefits to consumers.

Multiple Recoveries

Citizen Action opposes commission recommendations to eliminate multiple recoveries. These recommendations lower costs to the insurance industry by allowing them to collect premiums without having to pay full benefits to consumers. Recommendation 1.a. will shift expenses onto Maryland's health care system and ultimately raise health insurance rates for this already costly coverage. Any recommendation which shifts costs from auto insurance to health insurance will ultimately cost health care consumers more - this includes those who are good drivers and bad drivers, those in the city and in the suburbs.

Managed Care

Citizen Action opposes recommendation 2.a. This recommendation, if enacted, would have a negative impact on consumers in 2 ways: (1) it will take away health care choice from consumers and (2) it will create a conflict of interest.

Consumers will not be able to choose their own doctor. Rather, their choice of doctors will be limited to what their auto insurance company feels is appropriate -- even if they are currently under the special care of another physician.

The conflict of interest is clear. Auto insurance companies will make more money when they deny health care. Under this scenario, the company which provides a person's auto insurance will have a vested interest in limiting the quantity and quality of health care consumers receive if they are injured in an auto accident.

Under this scenario consumers are put in an extremely precarious position if they have been treated inadequately or unfairly. The remedy in such situations is unclear but will surely favor the auto insurance company. For example, what would be the grievance procedure under such a system? It is likely that the Auto Insurance-Managed Care Doctor would serve as a witness on behalf of the

injured party in such a situation. This is clearly a conflict of interest and dangerous for the consumer.

Medicare Proposals

Citizen Action opposes recommendation 2.b.i. which imposes a Medicare fee schedule on health care providers for soft tissue injuries and 2.b.ii which would limit the amount for which third-party defendants are liable for medical costs for soft-tissue injuries to the amount reimbursed by Medicare.

Congress is currently proposing a \$270 billion dollar cut to the Medicare program. No one knows what the future holds for this program, therefore it is unwise to base any recommendation on Medicare.

In addition, Maryland already has undertaken a great deal of health care reform in HB 1359. This legislation includes the provision to develop a resource based, relative value scale doctor fee schedule that is determined on a provider basis. HB 1359 also includes a provision for an electronic claims data reporting program so that the type of care, by provider, can be tracked. Imposing a new payment plan on some providers, while developing a universal one that makes sense for all health care consumers is unwise and will create unneeded confusion.

Fraud

Once again, Citizen Action agrees with the author of the report that "there is no room for fraud in the system." Individuals found guilty of committing fraud should be prosecuted to the fullest extent of the law. This includes claimants, health care providers, lawyers and insurance industry employees and believe that such. In this spirit, we support recommendation 3.b. which will create an accident reporting unit paid for by the insurance industry and recommendations 3.c.i., 3.c.ii and 3.c.iii which deal with licensing boards. Any professional found guilty of committing fraud should have their license revoked. In addition, we support recommendation 3.d. which will prevent "runners" from receiving compensation for directing or referring auto accident victims to an attorney or health care provider.

While Citizen Action supports efforts to reduce fraud, we do not support limiting benefits to all auto insurance consumers to achieve such a reduction. Recommendation 3.a. which requires physical evidence of contact punishes both good drivers and bad and therefore we cannot support it. We also oppose recommendation 3.e.ii. which would result in the punishment of the injured party not the individual who actually committed fraud. This is blatantly unfair.

Territorial Rating

Reducing Accidents



USF&G

James R. Lewis
Senior Vice President
Family and Business Insurance Group

August 31, 1995

David M. Funk, Esquire
Chairman
Governor's Commission on Automobile Insurance
Shapiro and Olander
Twentieth Floor
36 South Charles Street
Baltimore, Maryland 21201-3147

**Re: Objections to Recommendations Contained in the Preliminary Report of the
Governor's Commission on Automobile Insurance**

Dear David:

As a member of the Governor's Commission, individually, and on behalf of USF&G and the insurance industry, I am compelled to object to several of the Recommendations contained in the Preliminary Report of the Governor's Commission on Automobile Insurance for the reasons set forth below.

Recommendation 5, relating to "regulation of territorial rating practices", is too broad and as such is not supported by the evidence. It goes beyond the charge given to the Governor's Commission to seek ways to reduce rates in Baltimore City, and the implied charge to enhance competition in Baltimore City, which was a major goal of 1995 House Bill 923. Therefore, it should be more limited in its application.

Recommendation 5(a) is unnecessary. The Maryland Insurance Commissioner, in his prior approval review of every automobile insurance rate filing, determines whether or not the underlying risk considerations, which support the rates and the rating territories used, are actuarially-justified. He is required to do so by law, and Commissioner Bartlett stated at the August 28, 1995 meeting of the Commission, that he does so. Other than the complaint of one witness that "underlying risk considerations" should be defined by the Commissioner, the evidence

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does not suggest that a definition of this term is required or needed. In the alternative, if the Legislature wishes to elaborate and expand upon the statutory relationship between geographic territories and underlying risk considerations, it should be the body to do so; not the Insurance Commissioner. Therefore, Recommendation 5(a) should be deleted, or in the alternative, directed towards the General Assembly.

Recommendation 5(b) should be amended to reflect existing law and existing powers of the Maryland Insurance Commissioner and generally limited in scope. As you are aware, Part 2, Section A of the Preliminary Report states, at page 63, that "the Commission received no credible evidence that automobile insurance rates are excessively high in Baltimore City because of overt race discrimination by the insurance industry". The reason for this statement is simple. The use of race by insurers in underwriting (which includes setting rates and establishing rating territories) is expressly prohibited by the Maryland Insurance Code.

During the testimony taken by the Commission, only one witness made the allegation that race is used in establishing rating territories and that there was a correlation between race and rating territories. While such blatant violations of the Insurance Code are difficult to imagine because of the express prohibition to the use of race, it is appropriate to assure that such a correlation does not exist. The Maryland Insurance Administration, under existing law, has the power to investigate whether or not race is used as a factor in establishing rating territories, and whether or not race is a component used in the rating of automobile insurance policies. If the Maryland Insurance Administration determines that this is the case, then the Maryland Insurance Administration should prosecute the offending companies for violations of the Insurance Code. Recommendation 5(b)(i) encompasses these powers and is appropriate.

Recommendation 5(b)(ii), however, goes beyond the prosecution of such offensive behavior. Recommendation 5 (b)(ii) directs the Insurance Commissioner to "ameliorate the impact of territorial rating practices on African-Americans in Baltimore City" if he finds that there is a relationship between the racial composition of the territories and rates. This recommendation does not call for prosecution, but rather, some other action to address the territorial rating practices. Redrawing, redefining or ameliorating territorial rating practices is synonymous with providing for some sort of subsidy to the affected class. This is inappropriate and should not be recommended by the Commission.

More importantly, Recommendation 5(b)(ii) appears to contravene existing Maryland law. As stated earlier, Maryland law prohibits the use of race in ratemaking and prohibits any inquiry as to race, creed, color, or national origin by an insurer on any insurance form or in the application process. This assures that the rating process used by insurers is "blind" to race. Recommendation 5(b)(ii), absent some creative recordkeeping methods, will introduce race, and, specifically, a bias in favor of African-Americans, into Maryland's rating law. It will

David M. Funk, Esquire

August 31, 1995

Page 3

require some tracking of African-Americans by insurers to assure that adverse effects can be ameliorated. This is inappropriate, and if done by regulation, would force the Commissioner to contravene the Insurance Code. For this reason alone, Recommendation 5(b)(ii) should be deleted. In addition, Recommendation 5(b)(ii) violates the spirit of the statements made by Governor Glendening and Mayor Schموke at the initial meeting of the Governor's Commission that they were opposed to any recommendation or program which would provide a subsidy to Baltimore City.

It must also be noted that at the August 28, 1995 meeting of the Governor's Commission, at which these recommendations were discussed, that the three African-American members of the Commission who were present objected to any reference in Recommendation 5 to race and/or to specifically highlighting African-Americans. While Messrs. Gill and Lambert wanted a recommendation that addressed territorial rating in some way, they joined me in opposing the introduction of a reference to race or African-Americans into the Recommendation. Unfortunately, the Commission chose not to accept this request from these three members.

Lastly, the reference in Recommendation 5(b)(ii) to special treatment of African-Americans in any amelioration of rating territories, provides a bias against other minorities and all other insureds. This is also inappropriate.

For all of the above reasons, Recommendation 5 should be significantly re-worked to only require that the Maryland Insurance Administration investigate whether or not race is used in the establishment of rates and rating territories; and if so, the Maryland Insurance Administration should be directed to use all of its powers to eliminate this violation of the Insurance Code.

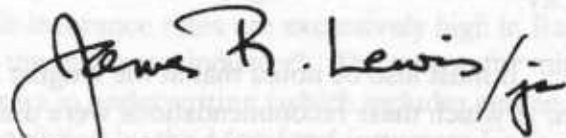
I also want to comment briefly on two other points. Recommendation 3(b) should not be funded by the insurance industry. The insurance industry provides support for the Fraud Unit through increased fees, and also pays millions of dollars in premium taxes to the State of Maryland. Any pilot program should be funded with State funds, after careful consideration of the cost-effectiveness and overall propriety of such a program, giving due consideration to the veracity and value of such reports. Also it would be inappropriate for such investigators to assess liability, as one member of the Commission envisioned their role.

Lastly, while the goal of the Commission to reduce rates in Baltimore City by 20% is laudable, I am not sure that our Recommendations reach this target. I do believe that an effective no-fault bill or an effective choice no-fault bill, receiving the full support of the Governor, would be the most effective way to reduce rates. While political opposition from certain parties may detract from the value of such a program if the sponsors allow it to be

compromised, an uncompromised bill is probably the fairest and most effective way to reduce automobile rates. Therefore, the Commission should recommend that the General Assembly and/or the Governor's Office consider no-fault, and let them decide if there is appropriate political wherewithal to pass such legislation intact.

Once again, I would like to thank you for the opportunity to participate in the Commission and to file these comments.

Sincerely yours,

A handwritten signature in dark ink, reading "James R. Lewis" followed by a stylized flourish that looks like "ja".

James R. Lewis

Senior Vice President

Member of the Governor's Commission on
Automobile Insurance

JRL/sgw

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EXECUTIVE SUMMARY

The Governor's Commission on Baltimore City Automobile Insurance Rate Reduction found that automobile insurance rates in Baltimore City are significantly higher than automobile insurance rates elsewhere in the State of Maryland and further found that higher automobile insurance rates in Baltimore City are caused principally by significantly higher bodily injury loss costs from automobile accidents involving Baltimore City drivers. The significantly higher bodily injury loss costs in Baltimore City reflect the fact that significantly more bodily injury claims are filed in Baltimore City than elsewhere in the State. Claiming behavior in Baltimore City lies at the root of higher automobile insurance premiums in Baltimore City.

Two global solutions were presented to the Commission to reduce rates in Baltimore City: the elimination of territorial rating and the adoption of a no-fault compensation system. The Commission rejected both solutions. Eliminating territorial rating would simply shift costs from Baltimore City to other jurisdictions. It would not reduce any of the underlying loss costs. Adopting no-fault might significantly reduce underlying loss costs, but by eliminating or severely restricting compensation for pain and suffering, no-fault would result in inadequate compensation to injury victims.

- - Rather than pursuing global solutions, the Commission decided to focus more narrowly on the problems and abuses associated with claiming behavior in Baltimore City and to fashion specific proposals to address these problems and abuses. In so doing, the Commission decided to take the "rifle" rather than the "shotgun" approach. Throughout, the purpose of the Commission has been to provide reasonable and realistic avenues of rate relief to the good, honest drivers in Baltimore City and elsewhere.

Two abuses in particular attracted the attention of the Commission: (i) the pattern and practice of multiple recoveries for the same injury and (ii) the number and treatment of nonverifiable soft-tissue injuries. Too many claimants recover for the same injury from multiple sources, and too many claimants incur excessive and unnecessary medical costs and attorney's fees for sprains and strains and aches and pains. Many of the Commission's recommendations are tailored to these abuses.

After many hours of testimony from regulators, experts, insurers, agents, attorneys and health care providers, the Commission ultimately focused on six major areas affecting the cost of automobile insurance in Baltimore City:

1. Multiple Recoveries: The Commission found that persons injured in automobile accidents may receive multiple recoveries for the same bodily injury. For example, a claimant may receive reimbursement for the same injury from health insurance, personal injury protection (PIP) and a liability settlement. The Commission found that these multiple recoveries contribute to the high cost of automobile insurance in Baltimore City. To ensure that claimants do not receive multiple recoveries for the same injury, the Commission recommends that recoveries under uninsured motorist (UM) coverage and third-party liability coverage be reduced by compensation or recoveries that the claimant receives from other sources. In addition, the Commission recommends that personal injury protection (PIP) cover only those costs and losses not otherwise covered by the claimant's health and disability insurance.

2. Medical Costs And Attorney Involvement: The Commission found that medical costs, particularly for soft-tissue injuries, and attorney involvement in bodily injury claims contribute to the high cost of automobile insurance in Baltimore City. To reduce medical costs,

the Commission recommends that insurance companies be permitted to offer a managed-care option for personal injury protection (PIP) and that major insurers and the Maryland Automobile Insurance Fund (MAIF) be required to offer a PIP managed-care option for the treatment of soft-tissue injuries. The Commission also recommends that reimbursement to health care providers for the treatment of soft-tissue injuries be contained at Medicare levels and that overutilization be limited through the use of peer review organizations and treatment protocols. To limit unnecessary attorney involvement in automobile accident claims, the Commission recommends that targeted direct-mail solicitations to automobile accident victims and their relatives by attorneys be prohibited for 30 days following the accident.

3. Fraud: The Commission found that fraud significantly increases the cost of automobile insurance in Baltimore City. To reduce the number of fraudulent insurance claims, the Commission recommends that (i) claimants be required to show evidence of physical contact in order to recover uninsured motorist (UM) benefits in a hit-and-run accident, (ii) an accident reporting unit be established within the Baltimore City police department as a pilot program, funded by the insurance industry, to prepare and file accident reports, (iii) the Insurance Fraud Division be required to refer evidence of attorney and health care provider fraud to the appropriate licensing and disciplinary boards and licensing and disciplinary boards be required to report to the Insurance Fraud Division on those cases in which no disciplinary action is taken, (iv) the license of any attorney or health care provider convicted of insurance fraud be revoked and (v) payments to "runners" who direct or refer automobile accident victims to attorneys or health care providers be prohibited. In addition, to reduce the costs associated with fraudulent applications for automobile insurance, the Commission recommends that insurers be permitted,

immediately and without prior notice, to cancel and rescind the policy of any insured who procures automobile insurance by purposely misrepresenting material facts on an automobile insurance application if the material misrepresentation is discovered before a claim is made and that insurers be permitted to deny first-party benefits to the insured if the material misrepresentation is discovered after a claim is made.

4. Mandatory Coverages: The Commission found that drivers are required by law to purchase first-party automobile insurance coverages that they may not need and do not want and that these unnecessary and unwanted coverages add substantially to the cost of automobile insurance in Baltimore City. The Commission recommends that both personal injury protection (PIP) and uninsured motorist (UM) coverage be fully optional.

5. Territorial Rating: The Commission found no credible evidence of intentional racial discrimination in the rate-making practices of automobile insurers. However, the Commission did receive evidence to suggest a possible correlation between the racial composition of rating territories and automobile insurance rates. To assure that territorial rating practices are free of unfair discrimination, as required by law, the Commission recommends that the Insurance Commissioner (i) adopt regulations to define the "underlying risk considerations" that insurers may use in establishing rating territories, and (ii) investigate the possible correlation between the racial composition of rating territories and automobile insurance rates and, if appropriate, adopt regulations on territorial rating, within the existing statutory framework and without arbitrarily shifting costs from one territory to another, that will ameliorate the impact of territorial rating on African-Americans in Baltimore City and elsewhere.

6. Highway Safety: The Commission found that preventable automobile accidents and preventable injuries in automobile accidents contribute to the high cost of automobile insurance. Therefore, the Commission recommends that certain highway safety measures be adopted in Maryland that have proved successful elsewhere in reducing the number of automobile accidents and the medical costs associated with automobile accidents. These include (i) cameras at high-risk intersections to photograph red-light violations; (ii) primary enforcement of seat-belt and child-restraint laws and (iii) prohibition of radar detectors.

Although the focus of the Commission was on Baltimore City rate reduction, the Commission believes that these recommendations should be applied, and will achieve savings, in all jurisdictions.

After delivering its Preliminary Report to the Governor on September 1, 1995, the Commission submitted its recommendations to Tillinghast, a nationally recognized firm of consulting actuaries, for an independent actuarial evaluation. Tillinghast found that several of the Commission's recommendations would have a significant impact on loss costs and premiums in Baltimore City and throughout the State. In particular, Tillinghast found that the recommendations to eliminate multiple recoveries and to contain medical costs for soft-tissue injuries would result in a significant reduction in losses and premiums for personal injury protection (PIP), uninsured motorist coverage (UM) and bodily injury liability insurance. Based on certain assumptions which are discussed in detail in its report, Tillinghast estimated "the impact on premiums [for mandatory coverages] statewide will be -21.5% and -24.2% in the city of Baltimore." Because of insufficient data, Tillinghast was unable to make any estimate of savings from the Commission's recommendations regarding fraud or highway safety.

INTRODUCTION

On February 20, 1995 Governor Parris N. Glendening signed Executive Order 01.01.1995.05, establishing the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction (Exhibit 1). The Commission was established to examine those factors which contribute to high automobile insurance rates in Baltimore City and to make recommendations to the Governor that will reduce these rates. In particular, the Commission was to examine rating practices by insurers, the influence claimant behavior has on insurance rates, and the roles of attorneys and health care providers on Baltimore City rates. The Commission was also asked whether the solutions it offered should be applied statewide. In addition, the Commission was charged with examining the role of the Maryland Automobile Insurance Fund (MAIF), Maryland's insurer of last resort in the automobile insurance market.

The Commission comprised 17 members of diverse backgrounds, experience and interests. Pursuant to the Executive Order, the President of the Maryland Senate designated Senators Thomas L. Bromwell, Martin G. Madden and John A. Pica, Jr. to serve on the Commission, and the Speaker of the Maryland House of Delegates designated Delegates Michael E. Busch, Cornell N. Dypski and Charles A. McClenahan to serve on the Commission. Mayor Kurt L. Schmoke (represented by Kevin S. O'Keeffe) and Baltimore City Councilman Melvin L. Stukes served on the Commission through designation by the Mayor of the City of Baltimore. Insurance Commissioner Dwight K. Bartlett, III, served on the Commission pursuant to the Executive Order. Governor Glendening appointed 8 members of the general public to serve on the Commission: Shelli Craver, State Director, Citizen Action of Maryland; Theresa V. Czarski, Esquire; Philip O. Foard, Esquire; David M. Funk, Esquire; Gregory N. Gill, Esquire;

Arthur W. Lambert, President, Lambert Insurance Agency, Inc.; James R. Lewis, Senior Vice President, United States Fidelity and Guaranty Company; and Martha C. Roach, Executive Director, Maryland Association of Health Maintenance Organizations. The Governor appointed Mr. Funk to serve as Chairman.

Governor Glendening announced the formation of the Commission as part of a major automobile insurance reform initiative to address the dual problems of availability and affordability of automobile insurance in Baltimore City. House Bill 923 (1995), sponsored by the Governor and passed during the 1995 Session of the General Assembly, addressed the issue of availability by requiring most major insurers to develop a marketing plan for Baltimore City and requiring them to market their products in Baltimore City in the same manner as in other parts of the State. The bill also addressed one of the major factors, identified by the Commission in this Report that increases insurance rates, insurance fraud, by reconstituting the Insurance Fraud Unit as the Insurance Fraud Division of the Maryland Insurance Administration (MIA) and increasing the funding for the Insurance Fraud Division.

While methods for reducing automobile insurance rates are the subject of debate, the fact that rates for City residents are high is not debatable. As can be seen in Exhibit 2, a comparative rate guide published by the Maryland Insurance Administration (MIA), rates for City residents are typically three times the rates for drivers in rural counties. In some cases, such as young drivers who can least afford to make payments, there is almost a five-fold difference in rates charged by some companies. Higher rates in the City are an additional financial burden on City residents, and are cited as one of the reasons residents choose to leave

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automobile insurance is personal and compulsory, a meaningful reduction in automobile insurance rates is akin to tax relief.

The Commission began meeting on March 13, 1995, and held 8 public hearings through May 17, 1995. The Commission held 5 additional meetings between July 24 and August 28, 1995, to review and to hear testimony on a draft Preliminary Report. The Preliminary Report was delivered to the Governor on September 1, 1995.

At the request of the Commission, the Governor authorized the Insurance Commissioner to engage an independent actuary to evaluate the recommendations in the Preliminary Report. The Insurance Commissioner engaged Tillinghast, a Towers Perrin company, to conduct an "Analysis of Proposed Statutory Reforms," which was presented to the Commission on November 2, 1995. The Tillinghast report is included as an Appendix to this Report.

The Commission held 4 meetings between November 2, 1995 and December 4, 1995, to hear testimony and to review the draft Final Report. In all, over 50 hours of hearings were devoted to receiving testimony and comments from interested parties. In addition, the Commission received hundreds of pages of written materials, providing data, analysis and opinion regarding the issues before the Commission. The Commission has drawn heavily on these materials in preparing this Report.

Part I of this Report represents the analysis by the Commission of the testimony and materials received, and the findings of the Commission based on the testimony and material considered. Part I is divided into eight Sections: Section A discusses automobile insurance coverages that are mandated by Maryland law and the way in which these coverages may lead to multiple recoveries for the same injuries. Section B discusses the rating practices of

automobile insurers and explores the justifications for, limitations on and challenges to territorial rating, including claims of unfair discrimination against City residents by insurers. Section C focuses on bodily injury claims and the ways in which these claims contribute to the cost of automobile insurance in Baltimore City. Section D discusses property damage costs, with particular emphasis on automobile theft and automobile repair costs. Section E reports on various fraudulent practices both in procuring automobile insurance and in making automobile accident claims. Section F examines the automobile insurance markets in Baltimore City and the ways in which private insurers and the Maryland Automobile Insurance Fund (MAIF) serve these markets. Section G discusses insurance company profitability and efficiency. Section H considers automobile accident costs in light of highway safety considerations. Commission findings are set forth at the end of each Section relating to the materials in that Section.

Part II of this Report contains the recommendations of the Commission as well as a brief discussion of the actuarial report prepared by Tillinghast.

PART I

DISCUSSION AND FINDINGS

SECTION A. AUTOMOBILE INSURANCE COVERAGE IN MARYLAND

In order to provide a foundation for its examination of those factors which cause high automobile insurance rates in Baltimore City, the Commission examined those coverages mandated by State law and the impact each coverage has on automobile insurance premiums.

1. Mandated Coverages

Like 40 other states, Maryland has a "financial responsibility" law.¹ The law applies to the owner of a motor vehicle and mandates the owner provide evidence he or she will be able to respond financially in the case of an automobile accident. In the case of private passenger automobile insurance, the financial responsibility laws are typically satisfied through the purchase of an automobile insurance policy. The statutes refer to this evidence of financial responsibility as "required security." Although the requirements in Maryland are fairly typical of states that have "required security" laws, the particular requirements vary from state to state. Set forth below are the coverages that comprise the "required security" in Maryland. These coverages are broken down into two general categories: "third-party" coverage, which protects the insured from lawsuits from third parties, and "first-party" coverage which provides benefits directly to the insured from the insured's own insurance company.

a. Third-party Coverages

- Bodily Injury Liability (BI). This liability coverage indemnifies the owner of the vehicle from claims and lawsuits by third persons for injuries arising out of an automobile

¹ § 17-101, Transportation Article, Md. Ann. Code.

accident, up to specified limits of insurance contained in the policy. When benefits are paid under this coverage in the policy, they are paid to a third party, not the purchaser. Under Maryland law the "required security" for bodily injury liability (BI) coverage is \$20,000 per person, and \$40,000 for any two or more persons (per accident).

- Property Damage Liability (PD). This is another form of "third-party" coverage, but protects the insured from lawsuits for damage to the property of another person, such as a motor vehicle, rather than bodily injury to another person. In Maryland, the required security for property damage liability (PD) coverage is \$10,000.

b. First-party Coverages

- Personal Injury Protection (PIP). Unlike BI coverage or PD coverage, PIP coverage is a "first-party" coverage.² This means that a driver recovers PIP benefits from his or her own insurance company. PIP benefits are paid without regard to the fault of the driver, so that even if a driver causes an accident, he may recover PIP benefits from his own insurer. PIP coverage is similar to health insurance coverage in that it provides first-party benefits for medical and hospital expenses. However, under Maryland law, PIP also pays benefits for lost income resulting from an automobile accident, reasonable and necessary expenses incurred for certain essential services usually performed by the injured party for family members, and funeral expenses. That statutory minimum for PIP coverage is \$2,500. However, some insureds voluntarily purchase more than the statutory minimum.

PIP benefits are payable to the first-named insured in the policy, and members of that person's family residing in the household, persons using the insured's vehicle with permission,

² § 539, Article 48A, Md. Ann. Code.

passengers in the insured's vehicle, as well as pedestrians injured by the insured's vehicle. PIP benefits may be waived by the first-named insured on the automobile insurance policy, but that waiver does not apply to family members residing in the first-named insured's household under the age of 16, certain passengers, or certain pedestrians.

- Uninsured Motorist (UM). This coverage pays when an insured driver and certain others riding in the vehicle are injured by an uninsured or hit-and-run motorist.³ UM is similar to "first-party" coverage in that it is paid by the insured's own insurance company. However, unlike PIP, UM is a fault-based coverage, and therefore has certain characteristics of third-party coverage. In Maryland, uninsured motorist (UM) coverage is by definition deemed to include "underinsured" coverage. In other words, if a purchaser of uninsured motorist (UM) coverage is involved in an automobile accident with an at-fault driver, and the at-fault driver has insurance (and therefore is not "uninsured"), but has BI coverage with limits of insurance that are less than the amount of UM coverage of the injured driver, then the UM coverage of the injured driver will be applicable over the amount of the at-fault driver's limit of liability.

In Maryland, the UM statute requires that the amount of BI uninsured motorist (UM) coverage under a private passenger motor vehicle insurance policy be equal to the amount of BI liability coverage purchased by the driver, unless the driver waives down to a lesser amount but, in no event, less than the statutory minimum for liability insurance (\$20,000/\$40,000/\$10,000).

The law concerning the precise scope of mandatory UM coverage as it applies to property damage (PD) coverage is not described with precision in the Insurance Code. Several references in the Insurance Code suggest UM coverage was only intended to apply to BI, not PD coverage.

³ 541(c)(1), Article 48A, Md. Ann. Code.

For example, an "uninsured motor vehicle" is defined to mean a motor vehicle the use of which has resulted in "[t]he bodily injury or death of an insured", and for which the sum of "the limit of liability under valid and collectable liability insurance [policies]...is less than the amount of coverage provided [under the UM statute]".⁴ No mention is made in the definition of property damage to the insured. Similarly, the language mandating the coverage refers only to bodily injury (BI) coverage.

...[E]very policy of motor vehicle liability insurance sold...in this state after July 1, 1975 shall contain coverage in at least the amounts required under [the required security law] for damages subject to the policy limit, which (i) the insured is entitled to recover from the owner or operator of an uninsured vehicle because of bodily injuries sustained in an [automobile] accident...⁵

The only reference to coverage for property damage is the provision which states: "In no case shall the uninsured motorist coverage be less than the coverage afforded a qualified person under Article 48A, §243H and 243I."⁶ The references to 243H and 243I are to the Uninsured Division of the Maryland Automobile Insurance Fund (MAIF), which pays benefits, including property damage, to those persons suffering damage as a result of an uninsured or hit-and-run automobile accident and who are not covered by another applicable policy. The Commission received testimony that notwithstanding this lack of clarity, the MIA requires insurers to provide - property damage (PD) coverage under UM coverage.

⁴ Id.

⁵ § 17-101, Transportation Article, Md. Ann. Code.

⁶ § 541(C)(2)(v), Article 48, Md. Ann. Code.

2. Impact Of Mandated Coverages On Insurance Rates

The Commission examined the relative impact the different coverages have on the premium paid by a typical driver who purchases the statutory minimum. Exhibit 3 shows the components of MAIF's statutory minimum policy by coverage for a typical driver in Baltimore City. The bodily injury (BI) component of the premium is the largest, constituting almost one-half of the entire premium. PIP is second, constituting one-fourth of the overall premium. Clearly, proposals that would reduce these two components of the premiums would have the greatest overall impact on rates, since together they comprise 75% of the overall rate.

The Commission also examined the impact that the limited PIP waiver has had on automobile insurance rates in Maryland as well as the impact that a full PIP waiver would have on these rates. Exhibit 4 shows the effect of both a limited and full waiver on MAIF drivers in various territories. Although more MAIF drivers have waived PIP in Baltimore City than in any other jurisdiction and, as a consequence of the limited waiver, these drivers have reduced their premiums substantially, the data show that permitting drivers to waive PIP in full would result in a further substantial reduction in rates.

3. Multiple Recoveries

Multiple recoveries occur when different coverages or funding sources compensate injured persons for the same injury. Testimony by the insurance industry suggested that multiple recoveries is a substantial contributor to high automobile insurance rates. Typically, multiple recoveries can be prevented by one or a combination of three mechanisms: subrogation by a health or disability insurer against the automobile insurer, reduction of judgments by amounts received from collateral sources, and coordination of benefits among first-party coverages.

Although the subject of multiple recovery and its impact on insurance rates is discussed more fully in Section C, there are several statutory provisions relating to the mandated coverages that allow for (and in some cases prohibit) multiple recoveries.

Maryland law does not require judgments to be reduced by amounts received from health insurers, disability insurers or other collateral sources. Thus, in the case where an automobile accident victim has received payments from his or her own health insurer and/or PIP insurer for medical bills, those same bills are also paid by the at-fault person's insurer under that person's BI coverage. This means that in some cases, BI coverage is used to make duplicative payments.

Maryland law also does not permit PIP benefits to be reduced by payments from collateral sources.⁷ Again, this means that in many cases benefits recovered under an insured's PIP coverage are also recovered from several other possible sources including, as noted above, the at-fault party's BI insurer. If bills are first submitted to the health insurer, they may also be submitted to the PIP carrier for payment.

The Commission notes that a recent case decided by the Circuit Court for Howard County has called into question this interpretation of the PIP statute, at least as it relates to HMOs.⁸ In that case, the victim received treatment for automobile accident injuries from his HMO. He then sought payment for that treatment from his PIP insurer. The Court cited the language of the PIP statute, which obligates PIP insurers for reasonable expenses arising out of an automobile accident if "incurred" within three years, and ruled that the PIP insurer had no duty to make payment because the victim had not "incurred" any medical expenses because all

⁷ § 540(a), Article 48A, Md. Ann. Code.

⁸ Campbell v. State Farm, Circuit Court for Howard County, Case No. 94-CA-24244, August 3, 1995.

treatment was rendered by the HMO. Whether this case, which could limit the opportunity for double recoveries from HMOs and possibly health insurers, will be upheld cannot be known at this time.

However, in the case where an insured has coverage for PIP-type benefits from another first-party coverage, such as health insurance, the law permits, but does not require, insurers to coordinate these coverages so that the insured is paid benefits without duplication.⁹ The law requires that in cases where insurers coordinate coverages, they must make appropriate reductions in premiums for the "reduced" coverage (i.e. nonduplicative coverage). The testimony before the Commission was that health insurers more often seek to coordinate benefits than do PIP carriers. As a consequence, PIP coverage is normally considered the "primary" coverage for the payment of medical bills in the case of an automobile accident.

Some parts of the PIP statute expressly prohibit certain double recoveries. For example, the law explicitly prohibits an insured from "stacking", that is, recovering PIP benefits from two motor vehicle insurance policies, and also requires that PIP benefits are reduced to the extent that the recipient "has recovered" benefits under State or federal workers compensation laws.¹⁰ Thus, there are some cases where the PIP statute specifically prohibits double recovery.

FINDINGS:

1. The bodily injury (BI) and PIP components of the premium represent the two largest components of the typical total premium for automobile insurance in Baltimore City.

⁹ § 540(b), Article 48A, Md. Ann. Code.

¹⁰ § 543, Article 48A, Md. Ann. Code.

Consequently, recommendations that focus on these two components will have the greatest impact on reducing rates in Baltimore City.

2. Even though the law authorizes an insured to waive a portion of the PIP coverage, PIP still constitutes a substantial portion of a driver's premium because PIP may not be waived as to all parties.

3. Because Maryland law does not require judgments to be reduced by amounts received from collateral sources, amounts received by an accident victim from the at-fault driver's BI liability coverage may duplicate amounts recovered from other sources such as health insurance and disability insurance.

4. Because PIP is paid without regard to fault and without regard to payments from collateral sources, PIP coverage may duplicate amounts received from other sources such as health insurance, disability insurance and third-party BI liability insurance.

5. Although the precise amount of duplication is not known, it does exist and insurance consumers pay for the cost of providing multiple recoveries to accident victims.

SECTION B. TERRITORIAL RATING

One of the charges to the Commission in the Governor's Executive Order is to examine the rating practices of insurance companies. The Commission therefore received and considered oral and written testimony, primarily from the insurance industry, relating to the manner in which automobile insurance premiums are established. The insurance industry presented the business and actuarial basis for current rate-making practices. The Commission also received testimony relating to the legal requirements and constraints relating to rate-making, and objections to one particular rate-making practice, that of territorial rating.

1. Cost-based Pricing

As a general proposition, insurance is a risk management technique that allows insureds to reduce the financial uncertainty that results from their inability to predict future losses. Insureds pay a premium to an insurer in exchange for having the insurer bear the risk of loss if the insured suffers a loss. Insurers assume the risks of loss by spreading the costs of all risks among a large number of similarly situated insureds, each of whom pays a relatively small but certain amount in the form of a premium. The process of establishing insurance rates is complex. The basic objective of rate-making is to establish a premium that will cover the expected losses and expenses of the insurer for the coverage that is being rated.¹¹ Generally speaking, insurers examine the past losses of the largest possible number of insureds, which they in turn use to estimate their probable future losses. These past losses are also considered in light of factors which may impact their costs in the future. For example, losses incurred in the future

¹¹ Interim Report of the National Association of Insurance Commissioners (NAIC) Availability and Affordability Task Force, December 6, 1994, p. 20.

may be more costly than past losses if the cost of health care in general is rising. Rates also include factors for general expenses and profits, among other factors.

That aspect of rate making which in large part has given rise to the establishment of the Commission is the practice of insurers classifying insureds into categories for the purpose of charging different rates to insureds in different classifications based on historic loss costs of those classifications. Typical classifications of risk used by automobile insurers include age, gender, and place of residence or geography.

The Interim Report of the National Association of Insurance Commissioners, Insurance Availability and Affordability Task Force, summarized the role of risk classification in the following manner:

The goal of risk classification is to create groupings of a similar prospective risks of loss so that the people, property, or vehicles with a higher risk of loss pay a larger amount of premium.... [T]here are many ways to group risks through rate classifications, so that the premium collected from a group of insureds will cover the expected losses from that group. Broader rating classes represent a larger grouping of risks, while smaller rating classes present a more detailed segmentation of the market.¹²

According to testimony from the insurance industry, the justification for the use of risk classification, such as rating territories based on geography is that of "cost-based" pricing. This concept was justified to the Commission by a representative of the insurance industry in the following manner:

One of the basic principles in pricing an insurance policy is that the price should reflect the cost of providing the coverage, plus a reasonable margin for profit. This is not a principle unique to insurance pricing but is widely followed in other competitive areas in an economy based upon private enterprise. Cost-based

¹² Id.

also

pricing is, in fact, the economic or allocational standard of fairness typically applied to the marketplace.¹³

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One representative of the industry presented several "principles" of rate-making promulgated by the Casualty Actuarial Society in support of the practice of cost-based pricing.¹⁴ For example, these principles require that "each policy should be priced at the level of risk associated with that policy." In addition, a rate should minimize "anti-selection." In other words, if a risk classification is not relatively homogenous, those with expected losses higher than the group's expected losses will find that rate attractive; however, those with lower expected losses will find the rate too high, and may chose not to insure. The loss of these good risks worsens the total experience of the class.

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The Commission takes note of the fact that the testimony relating to the rationale for risk classification was not always consistent, with some testimony suggesting it is done in the best interests of consumers, and other testimony suggesting it is done in the best interests of the insurers themselves. On the one hand, testimony received by the Commission from the industry, such as the described above, suggested that cost-based pricing was dictated by "fairness" to insureds: those who presented the highest risk should pay the highest premium, and vice versa. However, other representatives of the industry conceded that the drawing of territories is done for essentially competitive reasons.¹⁵ That is, to the extent that insureds residing in geographic areas with lower loss costs can be separated from insureds residing in higher cost areas, the insurer can charge the less "risky" group a lower premium, which in turn increases that insurer's

¹³ Statement of Mavis Walters, Executive Vice President, Insurance Services Office, Inc.

¹⁴ Id.

¹⁵ Testimony of Parker Boone, Actuary, Tillinghast.

competitive advantage. In other words, the consequence for an insurer for failing to parse insureds into the smallest possible risk classifications is that another insurer, having done so, will increase its market share with the best risks. The industry responds that these two goals, fairness and competitive advantage, are not inconsistent.

In the specific case of automobile insurance, the "cost" to the insurer to provide the product is composed primarily of the projected losses and expenses of a particular insured based on his or her particular classification. Insurers must project losses and expenses for the policy period because the actual losses and expenses are not known until actually incurred. Insurance companies project future costs based on past losses for a particular classification. These past losses are referred to as the "loss cost," or "pure premium." These two terms are interchangeable and refer to:

the total dollars of loss per insured vehicle. It is computed by dividing the total dollars of loss for a specified coverage by the number of insured vehicles.¹⁶

As described in the testimony by the industry presented to the Commission, the loss costs are influenced by two primary factors: the number of claims per insured vehicle (frequency), and the average dollars of loss per claim (severity).¹⁷ By multiplying the claims frequency, i.e., the number of claims per insured vehicle, by the average dollar of loss for each claim, i.e., the severity of the claim, the total dollars of loss per insured vehicle can be determined.

Exhibit 5 illustrates the principles of cost-based pricing and risk classification. The chart shows loss cost data for each of 9 territories in the State, based on claim frequency and severity.

¹⁶ Testimony of Elizabeth Sprinkel, Director of Research, Insurance Research Counsel, Inc. (IRC), and generally, IRC Report, "Auto Injuries: Claiming Behavior and its Impact on Insurance Costs", September 1994. See also ISO, Inc., "Factors Affecting Urban Auto Insurance Costs", December, 1988.

¹⁷ Id.

Severity and frequency are further broken down by the types of coverages discussed in the preceding Section. The data presented in the Exhibit show that the pure premium or loss costs vary by geographic territory and that residents in those high-cost territories will pay higher premiums that are reflective of the cost of the product that they purchase. For example, the average loss cost in Baltimore City is \$305.67, as compared to \$104.53 in Eastern Shore Counties.

2. Statutory Limitations

The Commission considered whether the practice of rate-making as described to the Commission is consistent with the requirements of the Insurance Code. Clearly, the Maryland Insurance Code explicitly recognizes and allows for the grouping of risks into classifications for the purposes of establishing rates and minimum premiums. Article 48A, §242(c)(4)(i) provides as follows:

Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that are demonstrated objectively to the Commissioner to have a direct and substantial effect upon losses or expenses.

The Insurance Code goes on to specifically recognize "territorial" rating:

However, no rate may be based partially or entirely on geographic area itself, as opposed to underlying risk considerations, even though expressed in geographic terms.

The Commission examined material submitted by the Insurance Commissioner and others on the issue of territorial rating, including 2 different Attorney General's Opinions, and a 1990 report by the then Division of Insurance in the Department of Licensing and Regulation. Several conclusions can be drawn from this material.

First, according to the Attorney General, in general, this language permits insurers to charge different premiums to insureds residing in the City or parts of the City than to insureds in other parts of the State. The Attorney General has opined that in light of this language "the Commissioner does not have the authority to disapprove a specific filing simply because rates differ from one territory to another."¹⁸ Thus, the mere fact that rates are higher in Baltimore City does not per se render them unfairly discriminatory under the Insurance Code.

Second, the law also requires that rate differentials between territories be based on "underlying risk considerations" that substantially affect the losses and expenses of the insurer. This key phrase is at the crux of the debate over territorial rating, and is not defined in the Code. However, as the Attorney General noted in interpreting this provision several years after it was passed by the General Assembly, Maryland law allows for several factors to be considered in making rates, including past and prospective loss experience and expenses, both nationally and statewide. The Attorney General opined that based on credible loss data establishing higher loss costs in those territories with higher rates, "the geographical classifications make sense" and satisfy the statutory standard.¹⁹ Therefore, while the Commissioner may not disapprove rates based solely on differences between territories, it is within the Commissioner's discretion to require that an insurer show the required link between geography and the underlying risk considerations with reasonably current actuarial data.

¹⁸ Opinion letter from Attorney General Stephen H. Sachs to Edward J. Muhl, Insurance Commissioner, September 22, 1982.

¹⁹ Opinion letter from Assistant Attorney General Carl E. Eastwick to Senator John Carroll Byrnes, May 9, 1977.

3. Challenges To Territorial Rating.

There was no direct evidence presented to the Commission to demonstrate that loss costs in the City or parts of the City are not higher than other parts of the State. However, the Commission received testimony that challenged the rating practices described above on two grounds.

First, the Commission heard testimony that the territories established by some insurers in which rates are highest are also those with the highest percentage of African-American drivers. Because of the disproportionate impact this rating practice has on the African-American community in Baltimore City, a complaint has been filed with the Maryland Human Relations Commission challenging the territorial rate disparities, and requesting that such rating practices be declared unlawful.

A second objection to the practice of territorial rating was described in an extensive report entitled "Underlying Risk Considerations: A Study of the Use of Territorial Rating For Private Passenger Automobile Insurance in Baltimore, Maryland". That study concluded that some insurers are engaged in a "systematic process of isolating the City from its county neighbors through the development of marketing and rating territories."²⁰ (As to the issue of exclusion by means of marketing strategies, the General Assembly addressed this issue with the passage of House Bill 923 (1995), sponsored by the Governor, in the 1995 Session. That bill imposes on most major insurers a duty to market in the City in the same manner as in the rest of the State.) The study argues that driving environments in the City and surrounding areas are similar and thus rates should not vary between adjacent territories to the extent they do. The study faults those factors currently used by insurers as "underlying risk considerations" because

²⁰ R & B Unlimited, Inc., "Underlying Risk Considerations: A Study of the Use of Territorial Rating for Private Passenger Automobile Insurance in Baltimore, Maryland", January, 1993.

they do not take into account the similar driving environments that typify territories, whose boundaries are adjacent, but whose rates vary dramatically. The study recommends the use of rate bands and other equalization measures to soften the disparities that exist between City and county residents.

The complaint filed with the Human Relations Commission and the study described above seek as a remedy to current rating practices the elimination of territorial rating. While the elimination of territorial rating would serve to lower the costs of insurance for City residents, or certain territories in the City, other territories would see a corresponding increase in their rates. Thus, the redrawing of territorial boundaries for the sole purpose of "reducing" insurance premiums for some residents only serves to redistribute and reallocate overall costs, and does not address underlying costs. The General Assembly has consistently rejected such an approach.

Although the Commission received no credible evidence of intentional race discrimination in automobile insurance rate-making, the Commission did receive evidence to suggest the possibility of a correlation between the rates charged in certain rating territories and the racial composition of those territories. The current law clearly prohibits discrimination in rating on the basis of race, color or national origin.²¹ Therefore, while the Commission agrees that cost-based pricing is a legal and valid basis for rate-making, the Commission also believes that the Insurance Commissioner should further examine current territorial rating practices to ensure that these practices do not transgress existing prohibitions on discrimination based on race, color or national origin.

²¹ § 234A, Article 48A, Md. Ann. Code.

One basis for such an examination is the language of the law authorizing territorial rating. As noted in the R & B Unlimited report, the term "underlying risk considerations" in the rating law lies at the basis for all justifications for current practices by insurers. The Commission notes that currently no regulations interpret this key phrase, particularly in light of statutes prohibiting discrimination. Although the Attorney General has upheld current rating practices, he has specifically recognized that discretion rests with the Insurance Commissioner to address this difficult issue. As stated in one opinion by the Attorney General:

"...the policy decision on this issue is for the Insurance Commissioner...he would be acting equally within the scope of his discretion under the law were he to insist upon more exacting data that might result in geographic line drawing that departs from the traditional..."²²

FINDINGS:

1. The practice of cost-based pricing, where drivers pay different premiums depending on the risk presented to the insurer by the driver, is a widely accepted and in general legitimate approach to the pricing of automobile insurance.
2. Redrawing territorial boundaries solely to equalize rates between territories, only serves to redistribute, not reduce costs.
3. Loss costs in Baltimore City exceed those in all other jurisdictions. As currently interpreted by the Insurance Commissioner and the Attorney General, these loss costs constitute underlying risk considerations for the purposes of the territorial rating statute.
4. The Insurance Commissioner's statutory authority with respect to the establishment of territorial boundaries is that of determining valid "underlying risk considerations" for the

²² Letter from Attorney General J. Joseph Curran, Jr. to Mary Pat Clarke, President, Baltimore City Council, December 18, 1990.

establishment of rating territories, requiring actuarial justification for the "underlying risk considerations" relied on by an insurer for the territory established and ensuring that impermissible factors, such as race, color, or national origin, played no role in establishing the territorial boundaries.

5. Although there is evidence to suggest that territories as currently configured may satisfy the legal requirements relating to what constitute permissible "underlying risk considerations" as interpreted by the Attorney General and the Insurance Commissioner, current law also prohibits discrimination in automobile rates based on race, color or national origin.

6. There may be a correlation in some cases between those territories with the highest rates and the African-American population of those territories. The Insurance Commissioner has the statutory authority to investigate and, if appropriate, to seek to address the correlation between high rates and African-American populations in rating territories.

SECTION C. BODILY INJURY CLAIMS

One of the charges to the Commission in the Governor's Executive Order is to examine the underlying costs of automobile insurance. As discussed in Section A and shown in Exhibit 3, the two coverages that comprise the majority of a typical automobile insurance premium and therefore contribute most to the cost of automobile insurance are those that respond to the bodily injury component of an automobile injury claim, the BI and PIP coverages. Therefore, the Commission received and considered oral and written testimony, primarily from the insurance industry, relating to these coverages and those factors which influence the costs of these coverages. Specifically, the Commission examined: 1) as background, these coverages in the context of the three general types of injury compensation systems in the United States; 2) those factors relating to automobile injury claims that particularly influence the underlying costs of these coverages from a national perspective, as well as in Maryland in general and Baltimore specifically; and 3) the anatomy of a typical automobile injury case in Maryland and the role BI and PIP coverages play in such a typical case.

1. Injury Compensation Systems

States are grouped into three broad categories depending on the way in which injured parties recover damages in automobile insurance claims. The three basic classifications of state laws relating to automobile insurance are: no-fault, add-on, and tort.

In the traditional or "tort" approach to compensation, an injured party seeks compensation for economic losses and noneconomic losses, such as pain and suffering, from the person who caused the injury. This recovery is typically from the BI liability insurance of the at-fault party.

In order to recover from a third party, injury victims must be prepared to prove fault on the part of the third party. Twenty-seven states are considered "tort" states.

In 9 states and the District of Columbia, drivers rely on the tort system, and claims against at-fault third parties, in order to recover their economic and non-economic losses, but there is a statutorily mandated first-party coverage, such as the PIP coverage described in Section A above. These PIP benefits are essentially "no-fault" benefits, but there is no restriction on the right of an injured party to pursue a liability claim as there is under a true no-fault statute. Maryland is an "add-on" state because Maryland law mandates the purchase of first-party no-fault PIP benefits and Maryland law does not restrict the ability to sue third parties for damages.

Finally, there are so-called "no-fault" states, where state law restricts the right of injured parties to sue at-fault parties, and most economic damages such as medical bills, are paid to an injured party by that party's own PIP or no-fault coverage. In such states, PIP is mandated, but usually in an amount much higher than the \$2,500 mandated in Maryland. The quid pro quo for the ability to receive payment for injuries without regard to the driver's own fault is the restriction on the driver's right to sue others. However, in none of these no-fault states is the right to sue absolutely prohibited. Each state law contains a "tort threshold" which allows for suit against an at-fault party if the injuries exceed the threshold set forth in the statute. Often these thresholds are described in monetary terms; however three states have laws that describe the threshold by describing in words the type of injuries that must be sustained, e.g., "serious" injury, before suit may be filed. These states are so-called "verbal" threshold states. Thus in no-fault states, drivers carry some BI coverage. Twelve states have no-fault laws, and three

art additional states have so-called "choice" no-fault laws, in which a vehicle owner has the option
of being insured under a no-fault policy or opting for a full "tort" option.

ns 2. Factors Relating To Underlying Costs

ut According to the testimony received by the Commission from the insurance industry, the
in factor which most significantly impacts the claims cost to the insurer, which in turn impacts the
io premiums paid by the consumer, is the bodily injury loss costs, i.e. the total dollars of BI loss
ie per insured vehicle.²³ Bodily injury loss costs are in turn dictated by severity of the average
ie claim, that is the average dollars of loss per claim, and the frequency of claims, that is the
d number of claims per insured vehicle, in a particular territory.

d There are several factors which in general affect claim frequency. For example, the
n higher the accident rate in a given area, the more likely it is claims will be filed more
t frequently. In turn, the accident rate may be affected by the vehicle congestion of the area.
2 Urban areas have more cars than rural areas, so one would expect higher accident frequencies,
and the data support this conclusion. Consequently, according to material submitted by the
industry, insurance rates will tend to be higher in urban as compared to rural areas because
objectively measurable conditions, such as traffic congestion and vehicle density, mean that the
likelihood of an accident occurring is higher in cities.²⁴

²³ See note 16.

²⁴ See generally ISO, Inc., "Factors Affecting Urban Auto Insurance Costs"; Tillinghast, "Study of Private Passenger Automobile Liability Insurance System", November, 1990, prepared for the 1990 Governor's Commission on Insurance; IRC Report, "Trends in Auto Injury Claims" 2nd Edition, February, 1995 (hereinafter cited as "1995 IRC Report").

Claim severity is also influenced by many factors. These include the relative costs of health care in a given jurisdiction, the speed at which the accident occurs, and safety features of the vehicle.²⁵

a. National Trends

Before examining those factors which are particular to the Baltimore City and Maryland insurance markets, the Commission examined national trends related to loss costs and insurance premiums.

i. Bodily Injury Loss Costs

The most comprehensive study submitted to the Commission was a study completed by the Insurance Research Council (IRC) in February 1995 entitled "Trends in Auto Injury Claims: Second Edition" (hereinafter cited as the "1995 IRC report"). The IRC is a nonprofit research organization founded by the property-casualty insurance industry. This study examined those factors which influence loss cost and changes in those factors between 1980 and 1993. According to the 1995 IRC report, between 1980 and 1993, the average bodily injury claim payment grew 114%, from \$4,755 to \$10,587.²⁶

ii. Claim Frequency

— According to the 1995 IRC report, between 1980 and 1993 there was a growing tendency by Americans to file liability claims for injuries in automobile accidents. The number of bodily injury liability claims per 100 insured vehicles rose 33% during this period.²⁷ Interestingly,

²⁵ Id.

²⁶ 1995 IRC Report, p. 6.

²⁷ Id.

and paradoxically, although the frequency of bodily injury claims has been rising, the trend in accident rates is downward, according to the 1995 IRC report. One measure of the trend in accident rates is to examine property damage liability claims. The incidence of such claims reflects the incidence of accidents because for every accident (in a tort state), the driver who is at fault is responsible for repairing all damaged property. In an accident where there is damage to a vehicle, a claim is made against the at-fault driver's property damage (PD) coverage. Therefore, the rate at which property damage claims are made reflects the underlying accident rate. The 1995 IRC report shows that between 1980 and 1993, although the frequency of bodily injury claims was rising, the frequency of property damage claims was falling.²⁸

iii. Claim Severity

The severity of claims has also been growing in the period between 1980 and 1993. According to the 1995 IRC report, the average claim payment more than doubled under the bodily injury (BI), property damage (PD), and personal injury protection (PIP) coverages.²⁹ However, the average bodily injury claim payment rose more slowly than the medical component of the consumer price index. Thus, the average bodily injury claim payment was growing more slowly than medical costs, and the study concludes that "medical cost inflation alone isn't driving auto injury costs higher".³⁰

²⁸ 1995 IRC Report, pp. 7-8.

²⁹ 1995 IRC Report, pp. 5-6.

³⁰ Id.

iv. "Relative" Bodily Injury Claim Frequency

As noted above, claim frequency, the number of claims per 100 insured vehicles, varies between city and rural areas due to those factors particular to urban areas, such as vehicle density and traffic congestion. In order to compare the claiming frequency in rural and urban areas, the Commission examined the relative frequency of bodily injury claims. This measure, the number of bodily injury claims per 100 property damage claims, holds constant the variations in accident frequencies in rural and urban areas due to factors such as increased traffic density, and allows for comparisons between the number of BI claims per 100 PD claims in cities and in rural areas.

According to the 1995 IRC report, this particular measure of frequency shows a marked upward trend nationally:

The number of bodily injury claims per 100 property damage claims increased 18% between 1989 and 1993 to 29.3 from 24.9, an average annual growth rate of 4.2 percent. Over the full 1980 to 1993 time horizon the number of bodily injury claims per 100 property damage claims increased 64%. In other words, given an accident, the likelihood of filing a bodily injury claim has increased 64%.³¹

Therefore, according to the 1995 IRC report, there is a national trend that for every accident in which property damage is claimed, there is an increased likelihood of a bodily injury claim being filed.

³¹ 1995 IRC Report, p. 9.

v. Differences In Relative Claim Frequency In Urban And Rural Areas

The national trend which is most relevant to the justifications offered by insurers for higher rates in Baltimore City are those trends comparing relative claiming rates in cities and rural areas. According to the 1995 IRC report:

Cities tend to have a higher number of bodily injury claims per 100 property damage claims than do towns in rural areas in the same state, indicating that city residents are more likely to file an injury claim than are people in rural areas. There were 29.4 bodily injury claims per 100 property damage claims in Miami, highest in Florida, compared to 8.8 bodily injury claims per 100 property damage claims in Franklin County, low for the state.³²

Exhibit 6 (Figure 3-3 from the 1995 IRC report) illustrates the great disparity in relative claiming rates between urban and rural areas in several selected states.

The 1995 IRC report concludes that these differences in rural and urban relative claiming rates are attributable to the claiming behavior of urban accident victims:

Examining data within a state gives some of the strongest evidence that claim behavior varies from area to area. Differences from state to state as noted above can be attributed to differences in state laws. Within a state, though, large differences in the number of bodily injury claims per 100 property damage claims strongly indicate differences in claiming behavior. Accidents in urban areas typically occur at low speeds, so should result in fewer bodily injury claims per 100 property damage claims. Yet urban areas have some of the highest numbers of bodily injury claims per 100 property damage claims.³³

In examining the huge disparity in bodily injury rates per 100 insured vehicles in California, the report notes that "a person involved in an accident in Los Angeles was more than twice as likely

³² 1995 IRC Report, p. 15.

³³ 1995 IRC Report, p. 16.

to have a bodily injury claim payment as an accident victim in any of the other three cities, a clear sign of difference in claiming behavior."³⁴

vi. Differences In Injuries And Treatments Received In Urban And Rural Areas

The relative claiming rate is not the only difference between rural and urban areas in the states. The Commission examined reports submitted by the insurance industry relating to the types of injuries reported by rural and urban claimants.

According to the 1995 IRC report, 75% of central city accident victims reported a sprain or a strain, as compared to 51% of accident victims in rural settings.³⁵ While these "soft tissue" injuries are more prevalent in city settings, more serious injuries are more prevalent in rural settings. Four percent of central city accident victims reported fractures, while 12% of accident victims in rural settings reported fractures. Similarly, 1% of the claimants in central city settings reported permanent total disabilities or fatalities, while 5% of claimants in the rural areas were reporting permanent total disability or fatality. According to the report, claimants in central city settings were also less likely to have received no hospital treatment (53%) as compared to claimants in rural areas (25%).³⁶ These statistics corroborate the premise that urban accidents are less severe than those in more rural areas.³⁷ (As used in the cited studies and throughout this Report, "soft-tissue" injury means sprains and strains that, unlike fractures or lacerations, are generally not objectively verifiable.)

³⁴ 1995 IRC Report, p. 20.

³⁵ 1995 IRC Report, p. 16.

³⁶ Id.

³⁷ Id.

a The Commission has also reviewed a 1994 study entitled "Auto Injuries: Claiming
Behavior and its Impact on Insurance Costs" conducted by the IRC (hereinafter cited as the 1994
IRC study) that examined variations in injuries to automobile accident victims depending on the
e location of the accident. This study corroborates the data in the 1995 Report concerning the
e types of injuries sustained by urban accident victims.

The 1994 IRC study found that in central city accident locations, 64% of the bodily
injury claimants reported only sprains or strains, as compared to 40% of bodily injury claimants
in rural areas.³⁸ The 1994 IRC study further found that between 1977 and 1992, more
claimants experienced no disability as a result of their injury and there was a decline in hospital
admissions for those making bodily injury claimants from 16% in 1977 to 7% in 1992.³⁹ The
1994 IRC study reported similar trends with respect to PIP coverage. The percentage of PIP
claimants reporting sprains and strains increased from 64% in 1987 to 71% in 1992. The
number of PIP claimants that did not experience any disability related to their injury increased
from 45% to 56% from the period 1977 to 1992, and PIP hospital admissions have declined
from 18% in 1977 to 10% in 1992.⁴⁰ Trends relating to the care of PIP claimants by health
care professionals track those trends described above relating to third-party claims.

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vii. National Trends Relating To The Use Of Particular Health Care Providers.

The 1994 IRC study also examined national trends relating to the use of particular health
care providers by automobile accident victims. The 1994 IRC study found there was an increase

³⁸ IRC study, "Auto Injuries: Claiming Behavior and its Impact on Insurance Costs", September, 1994
(hereinafter cited as "1994 IRC Study"), p. 19.

³⁹ 1994 IRC Study, pp. 20-28.

⁴⁰ Id.

in the use of particular health care practitioners during the same period.⁴¹ For bodily injury claimants, 27% of the claimants used chiropractors in 1992 compared with 20% in 1987.⁴² Seventy percent used physical therapists in 1992 while 14% of bodily injury claimants used physical therapists in 1987.⁴³ In 1992, the average number of chiropractor visits was 25 for bodily injury claimants, and the average number of physical therapist visits per bodily injury claimants was 19.⁴⁴ In contrast, the average number of visits by a bodily injury claimants to a physician or osteopath in other than an emergency room setting was 8.⁴⁵ Several conclusions can be drawn based on these statistics relating to types of injuries sustained and the type of provider most likely to render care. First, as noted above, generally urban accidents are less severe than rural accidents, and the types of injuries most frequently reported by urban accident victims support this premise. Further, the increased usage by urban accident victims of providers who treat less severe injuries is consistent with the fact the victims of urban automobile accidents are less seriously injured. However, if urban accident victims are less seriously injured than those in other areas, one would expect the medical expenses of such victims, the economic losses, to be lower. The testimony and evidence was inconsistent on this point. The 1994 IRC data show that the average BI payment for chiropractor and physical therapists is \$1,999 and \$1,676 respectively, the highest among all providers in the study.⁴⁶

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

However, representatives of these providers presented testimony that care rendered by members of these professions is less costly than care rendered in other settings or by physicians.

viii. Attorney Involvement

1) Attorney Involvement As A Factor In Insurance Costs

The insurance industry argues that one of the significant factors contributing to insurance costs is the level of attorney involvement in automobile accident claims. In support of this claim, the industry relies heavily on the data in the 1994 IRC study. The study concludes that high levels of attorney involvement in auto injury claims are associated with high auto insurance costs.⁴⁷ The study, which is based on a closed-claim study of over 62,000 claimants, attributes the high cost of attorney involvement to the fact that attorney-represented claimants report higher economic losses, such as medical expenses, than do claimants who are not represented by attorneys.⁴⁸ For example, Figure 6-9 from the study (Exhibit 7) shows that for claimants represented by an attorney and reporting a back sprain or strain, but who lost no time at work, economic loss was more than three times that of such claimants who were not represented by counsel. Similarly, for claimants represented by an attorney and reporting back strain or sprain but who were not restricted in the performance of their usual daily activities, economic loss was more than three times that of a claimant without representation.

There are several possible explanations for the dramatic differences in losses and injuries claimed by victims represented by lawyers and those who are not. The Institute for Civil Justice (ICJ), part of the RAND Domestic Research Division, identified the following possibilities:

⁴⁷ 1994 IRC Study, pp. 58-59.

⁴⁸ 1994 IRC Study, p. 64.

People who are more seriously injured or who incur greater losses are more likely to seek representation. Attorneys are more likely to take on a client whose injuries and losses are greater. Attorneys may encourage their clients to obtain the medical attention they need or, they may encourage their clients to obtain more medical attention than they need.⁴⁹

At least one explanation posited by the ICJ, that only the more seriously injured victims are represented by counsel (and therefore the claims costs of such victims are higher because their medical bills are higher) is not consistent with the data reviewed by the Commission. If this explanation were the sole reason for higher claims costs in attorney-represented cases, one would expect those states in which attorney representation is highest to also have the highest incidence of serious injuries. In examining the incidence of serious injuries among claimants in all the states, and the level of attorney involvement in automobile accident claims in the state, the 1994 IRC study found that a particular state's rate of serious injury (defined as fatalities, brain injuries, bone fractures, loss of senses or internal organ injuries) did not correlate with that state's level of attorney representation.⁵⁰

Furthermore, if the rate of attorney involvement correlated with the seriousness of the accident, one would expect a low level of attorney involvement in cities, because, as was noted earlier, city accidents are generally less serious, not more serious, than accidents in rural areas. However, as noted below, attorney involvement is greater in cities than in rural areas.

The 1994 IRC study asserts that the higher economic loss is due to more expensive medical care rendered to claimants represented by counsel.⁵¹ Using the back-strained victim

⁴⁹ Institute for Civil Justice (ICJ), "No-Fault Approaches to Compensating People Injured in Automobile Accidents", 1991, p. 27.

⁵⁰ IRC Study, p. 58.

⁵¹ 1994 IRC Study, p. 65.

described above, who lost no time from work and was therefore presumed not to be seriously injured, the study in Figure 6-11 (Exhibit 8) shows little difference in the extent of hospitalization for such victims whether or not represented, but in Figure 6-12 (Exhibit 9), the study shows that attorney-represented victims are more likely to seek care on a non-emergency basis and are more likely to be treated by chiropractors and physical therapists.

Another of the explanations, that attorneys may encourage their clients to obtain more medical care than is needed, is a controversial one. Representatives of the trial bar are the first to agree that obtaining compensation for nonexistent injuries, or "building-up claims", is fraudulent and should be prosecuted. However, they deny there is widespread involvement by attorneys in any over-compensation of accident victims. Whether the medical care received by an attorney-represented accident victim is appropriate given the victim's injuries (another of the possibilities suggested in the ICJ report) or is excessive, is in many cases the distinction between proper treatment and insurance fraud. The subject of fraud and excessive treatment for injuries is discussed more fully in Section E of this Report.

2) Variation Of Attorney Involvement By Geography

The 1994 IRC study also suggests that attorney involvement in automobile injury claims varies widely by, but correlates with, accident location. The highest percentage of represented bodily injury claimants are found in central cities (64%) and their suburbs (63%). In rural areas, 49% of claimants were represented by attorneys.⁵²

⁵² 1994 IRC Study, pp. 46-47.

b. Maryland And Baltimore

The Commission considered testimony and material indicating that Maryland and Baltimore follow the national trends relating to automobile accident claims and those factors which increase automobile insurance costs, except that in many cases Maryland and Baltimore outpace those trends resulting in higher premiums than in other cities and states.

i. Bodily Injury Loss Costs

According to the 1995 IRC report, bodily injury loss costs in Maryland rank 13th highest among the states.⁵³ Although representatives of the trial bar argue that BI loss costs in Maryland are among the lowest in the nation, the data cited above do not support this conclusion.

While Maryland's BI loss costs may be high in relation to other states, the Commission also considered data relating to those factors which account for the great disparity of costs among territories within Maryland. Exhibit 5 examines loss costs for territories in Maryland established by Insurance Services Office (ISO) and shows that the average loss cost in Baltimore City is three times that of rural counties (\$305.67 vs. \$104.53). In addition, the Commission reviewed a report on relative loss costs by ISO. ISO examined 5 years of insurance data for 18 different cities and ranked these cities according to loss costs and claim frequencies relative to the state as a whole.⁵⁴ Baltimore consistently ranked high in these "relativities" as compared to such cities as Chicago, Miami, Newark, Boston and New York City. For example, the bodily injury liability loss cost for Baltimore City was 2.37, meaning BI loss costs in Baltimore City

⁵³ 1995 IRC Report, p. 5.

⁵⁴ ISO, Inc., "Factors Affecting Urban Auto Insurance Costs", December, 1988.

were 2.37 times BI liability loss costs in the rest of the State. In this measure, Baltimore ranked third highest, behind Newark and Philadelphia.

ii. Claim Frequency

There are several sources of data concerning the claiming frequency of specific territories in Maryland. The first is Maryland specific data in the 1995 IRC report. The second is data submitted by the Maryland Automobile Insurance Fund (MAIF). The third is data reported by ISO.

The 1995 IRC study provides an analysis of bodily injury and property damage claim frequency for the 50 states and for 9 Maryland territories. The data for the 9 Maryland territories are reproduced in Exhibit 5. Maryland ranks 13th among the states in terms of overall claims frequency. As for particular territories in the State, Territory 1, which is Baltimore City, has the highest claim frequency (number of bodily injury claims per 100 insured vehicles). Not only does Baltimore City have a high claim frequency relative to other territories in the State, the ISO data show that Baltimore City had the third highest frequency of the cities surveyed in that study.⁵⁵ As with most cities, at least some of the higher costs of automobile insurance in Baltimore appear to be caused in part by the higher number of BI claims filed per 100 insured vehicles.

iii. "Relative" Bodily Injury Claim Frequency

An analysis of the 1995 IRC data on relative claiming rates, expressed as the number of bodily injury claims per 100 property damage claims, demonstrates that Baltimore's relative claim frequency exceeds that of other cities. For example, in Baltimore, there are 62.1 bodily

⁵⁵ Id., p. 20.

injury claims for every 100 property damage claims. This far exceeds the relative claiming rate in such cities as Miami (29.4), Oakland (45.6) Pittsburgh (18.0), Cleveland (40.8) and Cincinnati (26.0).⁵⁶

iv. Differences In Urban And Rural Areas

Maryland and Baltimore also reflect national trends reflecting a great disparity between urban and rural relative claim frequencies. As shown in Exhibit 5, the relative claiming rate in Baltimore City (Territory 1) is more than twice the rate than for such territories as suburban Montgomery County and Eastern Shore counties (Territories 8 and 13, respectively). This means that for every accident that results in property damage for which a third-party claim is filed, it is twice as likely that a claim for bodily injury will also be filed in Baltimore City than in suburban or rural territories. This increases insurance rates for residents of Baltimore City as compared to residents of other jurisdictions.

The data submitted by MAIF also support the general proposition that bodily injury claims are more likely to be filed when an accident occurs with a Baltimore City at-fault insured, but the numbers suggest the problem is much worse among MAIF insureds. According to the MAIF data, the ratio of bodily injury claims to property damage claims is 113.8, meaning that for every accident that results in a third-party claim for property damage, there was at least one, and in many cases more than one, bodily injury third-party claim.⁵⁷

⁵⁶ 1995 IRC Study, p. 18.

⁵⁷ Testimony and material submitted to the Commission by David C. Trageser, Executive Director, Maryland Automobile Insurance Fund.

v. Claim Severity

As discussed above, claim frequency is one component of the loss cost or pure premium; i.e., the basic "cost" of the product before factors such as general expenses and profit are added. The second is claim severity. The IRC data in Exhibit 5 show that the claim severity in Baltimore City is the lowest of all territories reported, with an average cost of \$8,422. The statewide average is \$8,932, with the two highest being Prince George's County (\$9,544) and Baltimore outer suburban (\$9,520). The ISO report supports the IRC data. According to that study, Baltimore ranked the lowest among 18 cities in terms of relative BI liability claim severity at .84.⁵⁸

It was suggested to the Commission that, given these data, claim severity does not play a role in the high rates in Baltimore City. However, claim severity is a measure of the average claim settlement cost per claim. It is computed by dividing the total dollars for all claims by the total number of claims for that coverage. Therefore, as the number of claims increases, the denominator in the calculation for claim severity increases and thus claim severity falls. Since the number of claims in Baltimore City is higher than other areas of the State, the relatively low claim severity would appear to reflect the relatively high number of claims in the City per insured vehicle, rather than a relatively low amount of dollars paid out in losses.

vi. Attorney Involvement

Just as Maryland and Baltimore are consistent with those characteristics described in the preceding Sections relating to BI loss costs, claim frequency, and relative claim frequency, Baltimore is consistent with, but exceeds, the national trends in terms of its level of attorney

⁵⁸ ISO, "Factors", p. 10.

representation for BI claims. In Baltimore City, 89% of all bodily injury claimants were represented by an attorney.⁵⁹ This was the second highest attorney-representation percentage for a city in the nation, second only to central city Los Angeles (92%). Similarly, Baltimore had the highest PIP attorney-representation rate at 80% in central city.⁶⁰ The next highest city was Philadelphia with 77% and Washington, D.C. with 56%. The Washington, D.C. rate for attorney representation for BI claimants for the city itself was 76%. Maryland ranked highest among tort states for percentage of attorney involvement in BI claims at 74%. Pennsylvania was ranked second at 68%, and Virginia was sixth at 55%.

Several conclusions can be drawn from these data and data presented previously in this Report relating to insurance costs in Baltimore City and attorney involvement. First, the data discussed in this Section show that attorney involvement in an automobile accident case substantially increases the claim cost of the accident, often by a factor of three. Baltimore has a high rate of attorney involvement compared to other jurisdictions in the State and to other cities. As a consequence, these data support the conclusion that attorney involvement plays a role in contributing to high rates in Baltimore City.

There was no evidence explaining the high rate of attorney involvement, although the high rate of attorney advertising on television in the State was cited as one possibility. Commission members noted, however, that television advertisements are seen by a wider audience than just Baltimore City. One possible explanation is that, as discussed previously, the likelihood of attorney involvement increases as the seriousness of the accident increases.

⁵⁹ 1994 IRC Study, p. 48.

⁶⁰ Id.

However, there was no evidence to suggest the high rate of attorney involvement in the City is due to the possibility that City residents sustain more severe injuries in their accidents than residents in other cities. In fact, the testimony submitted suggests that because accidents in urban areas occur at lower speeds generally, one would expect fewer injuries in City accidents, and therefore no increased likelihood for attorney involvement.

3. Anatomy Of A Bodily Injury Claim

The Commission received and considered testimony describing the anatomy of a typical automobile accident in Maryland. The testimony was in part based on studies presented to the Commission, such as those discussed above, and in part based on anecdotal oral testimony by the trial bar and the insurance industry. The testimony was instructive as to the interaction of many of the issues discussed in this Report including claiming behavior by injured parties, attorney involvement, claim settlement practices by insurers, required coverages, duplication of coverage, and utilization of health care providers.

As noted above, most claimants in automobile accidents in Baltimore City, and the rest of the State, are represented by counsel. Therefore, in the vast majority of automobile accident cases, either the claimant contacts an attorney or the attorney contacts the claimant. Once representation is established, the attorney opens 2 files in the case, a PIP file against the injured party's own insurer, and a third-party BI and PD liability file against the party alleged to be at fault.

Claimants then receive treatment for their alleged injuries. According to the 1994 IRC study, up to 30% of Maryland automobile accident claimants are referred to a particular health

care provider by their attorney.⁶¹ This is the highest referral rate in the country. Reasons for this high rate of referral may vary. It was suggested to the Commission that some claimants, lacking health insurance and having no family physician, may not know of a provider to see. However, the Commission also received testimony from the insurance industry suggesting that in some situations involving insurance fraud, such referrals are made by an attorney to a provider known by the attorney in order to ensure a more lengthy and expensive course of treatment than the injuries or alleged injury may merit, thereby increasing recovery. In any event, the typical automobile accident claim in the City is for soft-tissue injuries, such as sprains and strains. This is generally corroborated by a study conducted by MAIF, which indicated that for MAIF insureds, 93% of all PIP medical payments were for the treatment of soft-tissue injuries.

As treatment is rendered, bills are generated. As noted in Section A.3., the medical bills in automobile accident cases may be submitted to several different sources for payment. The testimony suggests that initial visits to health care providers are usually paid for through the PIP coverage. The bills also may be submitted to a health insurance carrier, and, ultimately, the medical bills are part of the "special" or economic damages for which payment is sought from the at-fault third party. The testimony indicated that although health insurers may seek recovery of such payments from at-fault parties through subrogation, this is not always or easily done.⁶²

There was testimony that focused on the manner in which automobile accident cases are negotiated and settled by the parties, particularly as to the recovery for noneconomic damages

⁶¹ 1994 IRC Study, p. 68.

⁶² Testimony of Jeffrey S. Joy, Director of OPL & Cost Containment, Blue Cross Blue Shield of Maryland.

such as pain and suffering. The third-party claim has several components: the property damage claim, if, for example, the injured party's car was damaged, the bodily injury damages such as medical bills, lost wages, and finally the so-called noneconomic damages, such as pain and suffering. The insurance industry testified that the noneconomic element of the settlement is generally based on some multiple of the "specials" such as the medical bills. Thus, for example, if a person incurred \$3,000 in medical bills, a settlement in this accident would most probably include a payment for pain and suffering that could range anywhere from 1 to 4 times this amount, or an additional \$3,000 to \$12,000. The insurance industry also testified, however, that other factors affect the settlement amount, including the nature of the injury and its impact on the claimants daily living. The testimony of the insurance industry relating to the use of multiples of the "specials" to determine general damages was supported by several studies reviewed by the Commission. One study, prepared by the Institute for Civil Justice, found that for individuals with less than \$2,000 in medical bills, total recoveries averaged 2.5 times their economic loss.⁶³ A study prepared by Tillinghast, an independent actuarial firm, found that for every \$1.00 of economic losses paid to injured parties in Maryland, those claimants that hired an attorney received an additional \$1.57 in noneconomic losses.⁶⁴ The 1994 ICJ study suggested that in the case of less serious injuries, claimants with attorneys received two-to-three dollars for each dollar of economic loss.⁶⁵

⁶³ ICJ, "No-Fault Approaches to Compensating People Injured in Automobile Accidents", 1991.

⁶⁴ Tillinghast, "Governor's Commission on Insurance: Study of Private Passenger Automobile Liability Insurance System", November, 1990, p. 37.

⁶⁵ 1994 IRC Study, p. 62.

Representatives of the trial bar testified that the use of formulas to determine pain and suffering was an innovation of the insurance industry to more easily allow for the settlement of cases without the need for a trial.

The testimony describing the typical automobile accident case raises several points of importance to the Commission. First, as noted in Section A, there are several opportunities for multiple recovery for a claimant's medical expenses in the system. For example, if health care visits are first paid for by a health insurer, the claimant may also recover payment from his or her PIP carrier. This is because the law requires that PIP payments are paid without regard to other sources of payment. In the case where PIP pays for the initial visits rather than a health insurer, the chances for double recovery are lessened since more health insurers will seek to coordinate benefits with the PIP carrier and avoid double payment. However, whether or not a claimant receives multiple first-party recoveries, the law permits the same bills to be submitted to the at-fault party for payment. Since these multiple recoveries are made in large part from BI and PIP coverages, these multiple recoveries add to the cost of automobile insurance generally.

The second point of significance for the Commission is that, as noted in a 1995 report by the Institute for Civil Justice,⁶⁶ the current system of claimant compensation, which allows for double or even triple recovery of medical costs, and which compensates victims for pain and suffering based on a multiple of the actual damages sustained, coupled with the current system of attorney compensation wherein attorney's fees are linked to the size of the total recovery, creates the opportunity for some unscrupulous claimants, health care providers and attorneys to

⁶⁶ Institute for Civil Justice (ICJ), "The Costs of Excess Medical Claims for Automobile Personal Injuries" 1995, p. 5 (hereinafter cited as "ICJ, Excess Medical Claims").

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profit from over-treatment of injuries, or treatment for nonexistent injuries. Such conduct, which constitutes fraud and is discussed in more detail in Section E, adds to the cost of automobile insurance because, again, payments for inflated or nonexistent injuries are made from BI and PIP coverages.

4. No-Fault Insurance

In a tort system, those individuals injured in an automobile accident seek recovery from other individuals, third parties, who may be liable to compensate them for their injuries. Recovery in the tort system would include compensation for economic losses, such as medical costs and expenses, lost wages, and other monetary costs, as well as what are termed "noneconomic losses," which generally include compensation for pain and suffering and other nonmonetary damage. Under the traditional tort system, which is a fault-based system, the injured party will seek compensation from those third parties who are, or are claimed to be, responsible for the injured party's injuries. If the party at fault has automobile insurance, that person's bodily injury (BI) insurance pays the compensation the at-fault person owes to the injured person up to the limits of the policy.

Under a no-fault system, compensation for certain injuries is obtained from the injured party's own insurer, so-called first-party coverage, without regard to fault. In general, a no-fault insurance system will bar fault-based third-party liability claims unless the injury sustained by the injured party is sufficiently serious so that the law allows a third-party claim as well as the first-party claim against the injured party's own insurer. No-fault laws all have some type of "threshold" which will determine under which circumstances an injured party may bring a law suit against the at-fault party. Three states, Florida, Michigan, and New York, have a so-called

"verbal threshold" which describes in words (e.g. "significant and permanent loss of an important bodily function") when a person's injuries exceed the "threshold" and therefore when that person may sue the at-fault party. Other state laws contain a so-called "dollar threshold" which permits an injured party to sue a third-party tortfeasor if the medical costs and other damages of the injured party exceed a specified dollar amount. By exceeding the threshold, an injured party in a no-fault state can sue for all economic loss above that which that injured party's own PIP coverage will cover, as well as any noneconomic losses such as pain and suffering, since those are not covered under the first-party PIP coverage.

The Institute for Civil Justice at RAND Corporation conducted an exhaustive study of no-fault in 1991 entitled, "No-Fault Approaches to Compensating People Injured in Automobile Accidents." The study was based on a closed-claim industry survey conducted by the All Industry Research Advisory Council (AIRAC), currently called the Insurance Research Council (IRC). That study made a comparison of the gross and net compensation received by claimants in tort and no-fault states, as well as the relative "transaction cost," such as claims processing and attorneys' fees.

In tort states, the gross compensation paid to people injured in automobile accidents averaged \$4,681.⁶⁷ Of this, claimants netted an average of \$3,645, with \$1,036 going to legal fees and other transaction costs. RAND used a simulated model to estimate the total compensation the average individual should have received, and the transaction costs, under a no-fault plan with a strong verbal threshold and a \$15,000 PIP benefit level. Because the transaction costs were significantly reduced under the no-fault alternative, claimants took home

⁶⁷ ICJ "No-Fault Approaches to Compensating People Injured in Automobile Accidents". 1991, pp. 18-25.

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a much greater percentage of the gross compensation as net compensation. The average gross compensation was \$3,764, and the net compensation for the claimant was \$3,182, or 85 % of the gross compensation.⁶⁸ Insurer transaction costs were similarly reduced under the no-fault alternative. However, the reduction in transaction costs comes at a price: the net compensation to the claimant in the no-fault system is less than the net compensation a claimant receives in the traditional tort system.

The numbers described above make certain assumptions about the particular no-fault plan; i.e., a strong verbal threshold and a \$15,000 PIP benefit level. The specific results may vary depending on the actual design of the no-fault plan. In general, transaction costs account for about one-third of injury coverage costs in the tort system and a no-fault approach could reduce these transaction costs by about a third, resulting in an overall net reduction in total injury coverage costs of about 10 percent.⁶⁹ However, as described above, such reductions can mean reductions in compensation paid to claimants as well. Such a result can be expected based on the fundamental differences between a no-fault and tort system. Shifting from a tort system to a no-fault system means that injured people recover from first-party sources; i.e., their own insurer, rather than their third-party compensation sources. First-party sources, however, can only compensate for economic losses. Therefore, the reductions in net compensation to no-fault claimants generally are for noneconomic losses. The study concludes, in fact, that in general economic losses are generally more fairly compensated under a no-fault system than under a tort system.

⁶⁸ Id.

⁶⁹ Id.

Given the Commission's charge, the issue of particular concern to the Commission is whether no-fault insurance would serve to significantly reduce automobile insurance premiums for the City of Baltimore or the rest of the State. A number of studies have been conducted on this issue, and although the data suggest that there may be some savings attributable to no-fault insurance, the data in the reports are not conclusive. For example, the Research Division of the Maryland Department of Legislative Reference published a study in December 1990 entitled "No Fault Auto Insurance: Does it Provide Consumers More Benefits at a Lower Cost?" The report used a multiple regression analysis to examine the relationship between average premiums, average losses, and no-fault insurance in various states. The report found that many of the benefits associated with no-fault insurance are paid faster and that no-fault claimants receive a greater percentage of the total compensation. However, the report also concluded:

The current 'in-balance' no-fault systems do not provide these benefits at a lower cost. Between 1984 and 1989, the average auto insurance premium in tort states was lower than in "in balance" no-fault states (\$365.06 vs. \$288.29). A multiple regression analysis revealed that the option of an "in balance" no-fault system increases average auto insurance premiums by \$26.80.⁷⁰

The insurance industry argues that an alternative to the traditional no-fault plan is the so-called "choice" no-fault proposal in which a consumer may choose either a traditional tort-based auto insurance plan or a no-fault plan. The industry cites a research brief prepared by the Institute for Civil Justice which suggests Maryland consumers would save on the average of 38% in premium costs if a choice no-fault plan were enacted.⁷¹ However, the plan analyzed by the ICJ is an "absolute" no-fault plan in which "motorists may never sue, or be sued, for

⁷⁰ Dr. Elizabeth Sammis, Maryland Department of Legislative Reference, "No Fault Auto Insurance - Does It Provide Consumers More Benefits at a Lower Cost?", 1990, p. 14.

⁷¹ Institute for Civil Justice (ICJ) Research Brief, "Choosing an Alternative to Tort", July, 1995.

noneconomic damages."⁷² The Commission notes that no state has ever enacted an absolute restriction on a claimant's ability to seek redress through the courts. As noted above, although such savings result in part from a reduction in transaction costs, the savings are also the result of lesser compensation being paid to accident victims.

FINDINGS:

1. Bodily injury loss costs are a major contributing factor to insurance rates. These loss costs are in turn influenced by claim severity and claim frequency. In general, urban areas have higher claims frequency, and thus higher insurance premiums.
2. Urban areas generally reflect a higher relative claim frequency, which is defined as the number of BI claims per 100 PD claims. This measure allows for a comparison between rural and urban areas, controlling for variations in those factors that affect frequency such as vehicle density and traffic congestion. Urban areas in general have higher relative claim frequencies. This higher relative claim frequency is most likely attributable to differences in claiming behavior among urban accident victims. That is, it is more likely that accidents in urban areas will result in a bodily injury claim being filed. This increases BI loss costs, which in turn increases premiums.
3. There is a correlation between attorney involvement in automobile accident cases and the economic losses reported by accident victims, with higher losses reported by claimants with attorneys. Urban accident victims are more likely to be represented by an attorney. Therefore, urban accident victims are more likely to report higher economic losses.

⁷² Id.

4. Urban accident victims are more likely to claim soft-tissue injuries than rural accident victims.

5. Maryland and Baltimore track several national trends relating to automobile accident claims and factors that influence premium costs. However, in many cases those factors are more prevalent in Maryland and Baltimore.

6. Baltimore City has higher bodily injury loss costs than other areas of the State. Baltimore City has a greater claim frequency than any other area of the State. Some data show Baltimore has a high rate of claim frequency even compared to other cities. More frequent claims result in higher loss costs in Baltimore City. This contributes to high automobile insurance premiums in Baltimore City.

7. The relative claim frequency in Baltimore City is more than twice that of suburban or rural parts of the State. This means that for every accident in which a property damage claim is filed, it is twice as likely that a bodily injury claim will be filed if the accident occurs in Baltimore City than in other areas of the State. The same holds true for PIP claims. The higher claim rate appears to be a function of claimant behavior.

8. Among tort and add-on states, Maryland ranks highest for the level of attorney involvement in BI claims arising out of automobile accidents. Baltimore ranks second highest among cities for the level of attorney involvement in BI claims arising out of automobile accidents. Because there is a correlation between attorney involvement and higher loss costs, the high level of attorney involvement in Baltimore City is a factor in Baltimore City's high insurance rates.

9. Maryland ranks highest in the nation of those claimants who were represented by attorneys who were advised by their attorney to see a particular health care provider.

10. The current system creates incentives for fraud in the treatment of injuries sustained in automobile accidents, which increases insurance costs and premiums, for the following reasons:

a. Claimants are compensated for noneconomic damages based on a multiple of the economic damages sustained by the injured party, and therefore increase their recovery for pain and suffering, and thus their total recovery, by increasing their special damages;

b. Because treatment for injuries covered by a person's PIP benefits are subject to multiple recoveries, each dollar spent on treating an injury covered by PIP increases the claimants overall recovery; and

c. Attorneys are typically compensated on a contingency fee basis, and therefore attorney's fees increase as special damages, and the corresponding general damages, increase.

These incentives may influence the claiming behavior of urban accident victims described in Finding No. 7 above.

11. No-fault automobile insurance laws, if adopted in the proper form, have the potential to reduce premiums in Baltimore City and the rest of the State. The data relating to actual premium reductions for no-fault laws that have passed are inconclusive. In general, any reductions in premiums would be partially the result of reduced recoveries by claimants, particularly for noneconomic damages.

SECTION D.

PROPERTY DAMAGE COSTS

As noted in Section A, the bodily injury (BI) component of the premium for the minimum mandatory coverages is the largest, constituting almost one-half (1/2) of the entire premium, with personal injury protection (PIP) constituting the second largest portion of the premium, about one-fourth (1/4). Property damage (PD) constitutes about 15% of the total premium and, although not as fertile a source for savings as BI and personal injury protection (PIP), was investigated by the Commission as a possible area for savings. The point was also made to the Commission that for those individuals who purchase collision and comprehensive coverages, these coverages can add significantly to the cost of automobile insurance.

The Commission heard testimony from representatives of three different insurers concerning property damage costs. The witnesses submitted substantive testimony that the most significant factor influencing the high cost of property damage repairs is the increasing cost of automobiles, and the high cost of replacement parts for automobiles.⁷³ Replacement parts constitute approximately 37% of claims costs. Modern features such as airbags and on-board computers increase the cost of repairing new vehicles which are damaged in automobile accidents. As such, property damage claims costs are more a function of claim severity than claim frequency. Data were submitted showing that the availability of "after-market" parts can help to reduce repair costs in two ways. First, such parts are generally cheaper than original equipment manufacturer (OEM) parts. Second, the greater availability of such lower-priced parts appears to create downward pressure on the price of OEM parts because of the competition between "after-market" parts and original parts.

⁷³ Testimony of Glen Peterman, Nationwide Insurance; Bob Browning, State Farm Insurance.

The Commission received testimony concerning direct-repair programs for property damage to vehicles. These programs are offered by insurers on a voluntary basis to insureds. They bear some resemblance to managed-care options for health insurance in that the insurer provides a list of approved repair providers just as a managed-care health insurer, HMO or PPO may have a list of approved health care providers. An insured who voluntarily elects to use a shop that has been recommended by the insurer will have that work guaranteed by the insurer. According to insurer representatives, such repair programs, which are elected at the time the claim is made (not when the coverage is first purchased), are intended primarily to ensure quality and consumer convenience. Any cost savings is a secondary benefit. In fact, in response to questioning from the Commission as to whether savings from the direct-repair program should be directed to those who elect the program in the form of lower premiums, the Commission was told that savings from the program were not substantial.⁷⁴

Under Maryland law, an insurer may not require an insured to use a particular repair shop or facility.⁷⁵ The testimony from representatives of both the insurance and repair shop industries was that the current law is a compromise which works generally to the satisfaction of all involved.

The Commission received testimony that automobile theft adds to the costs of non-mandatory coverage such as comprehensive coverage. Some insurers grant discounts for the use of anti-theft devices, but such devices generally must be activated automatically for a discount to be applicable. This is apparently because the reliability of anti-theft devices which must be

⁷⁴ Testimony of Jeffrey Rouch, Nationwide Insurance Company.

⁷⁵ § 490Q(b), Article 48A, Md. Ann. Code.

activated or positioned by the driver at the driver's discretion are less effective in preventing automobile thefts. The Commission also received testimony concerning the Vehicle Theft Prevention Council and the Vehicle Theft Prevention Fund, which were created by legislation to provide grants to law enforcement agencies and community groups to target auto-theft prevention.⁷⁶

FINDINGS:

1. The most significant factor influencing property damage costs is claim severity.
2. Claim severity is largely determined by the costly nature of new automobiles and the expense of replacement parts.

⁷⁶

§§4-1601 et seq., Art. 41, Md. Ann. Code.

SECTION E. INSURANCE FRAUD

Insurance fraud was cited by the insurance industry as a factor that increases insurance rates. One representative of the industry testified that up to 10% of claims involve "hardcore" fraud and up to 40% of claims involve inflated claims.⁷⁷ This distinction between "hard" and "soft" fraud was also made by the Associate Commissioner of the Fraud Division of the Maryland Insurance Administration. So-called "hard" fraud consists of conduct such as "staged" accidents, claims for nonexistent injuries and billing by providers of services that were not actually provided. "Soft" fraud, more typical in minimum impact accidents, typically involves claimants, in conjunction with unscrupulous providers and/or attorneys, who seek to drive up medical bills, and thus their ultimate recovery, through the over-treatment of injuries. The Commission received anecdotal testimony on fraudulent practices and reviewed studies on the subject.

1. Automobile Accident Claims

- a. Claims For Nonexistent Injuries And "Cost Build-Up"

The Commission considered a report addressing claiming behavior and fraud prepared by The Institute for Civil Justice (ICJ). The authors of the ICJ study developed a methodology for measuring the frequency of claims for nonexistent injuries, and for claims subject to "cost buildup," the two types of fraud that would be most common under Maryland's compensation system. The study used as a baseline the ratio of soft-injury claims to hard-injury claims in Michigan and New York, states with strong "verbal" no-fault thresholds.⁷⁸ The theory behind

⁷⁷ Testimony of David Snyder, American Insurance Association.

⁷⁸ ICJ, "Excess Medical Claims", p. 13.

this methodology is that hard injuries, such as loss of a limb or fracture, are objectively verifiable. It is difficult, or even impossible, to make a claim for a "hard injury" that in fact is nonexistent. That is not the case with soft injuries such as sprains or strains. Such injuries are not generally objectively verifiable and present an opportunity to exaggerate their existence or seriousness. However, in Michigan and New York, one would assume that claims for nonexistent soft injuries would be rarer because of the strong verbal threshold which prohibits third-party claims except for the most serious of injuries.⁷⁹

Michigan and New York have a soft-injury/hard-injury index of .7; in other words, there are seven soft-injury claims for every 10 hard-injury claims. The authors of the study compared the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York to measure the degree to which claims are being submitted for nonexistent soft injuries in that state. Under this methodology, Maryland had the second highest claiming rate for these so-called nonexistent injuries, second only to California.⁸⁰ Whether this ratio is a reliable measure of nonexistent claims was debated by Commission members. However, it does show that Maryland has the second highest percentage of soft-tissue injuries, compared to hard injuries, in the nation. See Exhibit 10.

— The ICJ authors also studied the incidence of cost buildup on soft-injury claims. Maryland fared better in the ICJ study on this measure. Again, the study used Michigan and New York to establish an index based on the assumption that there is little incentive to build up costs on soft-injury claims in Michigan and New York because of the strong verbal threshold.

⁷⁹ Id.

⁸⁰ ICJ, "Excess Medical Claims, p. 14.

The study found that those states with no-fault laws with dollar thresholds were most susceptible to cost buildup in soft-tissue injuries. This finding supports what critics of such laws argue: the dollar threshold becomes a target for medical expenses, which, if exceeded, allows for recovery of pain and suffering. Maryland as an add-on state, was between Michigan and New York in this measure, and thus did not register as a state particularly susceptible to cost buildup.

The testimony before the Commission by representatives of the chiropractic profession was that claims for nonexistent injuries could be detected in many cases by thorough examinations by well-trained professionals. However, the representatives conceded that because of the subjective nature of soft-tissue injuries, fraud does occur.

b. "Phantom" Vehicle

The Commission received testimony that the property damage (PD) portion of UM coverage is particularly susceptible to abuse and fraudulent claims. This possibility arises in situations where an insured accidentally causes damage to his or her own vehicle. Representatives of the insurance industry testified that, in some cases, insureds may claim a "phantom" vehicle caused the insured to swerve into an object or run off the road, causing damage, enabling the insured to recover under his or her own UM coverage, which may have a lower deductible and is not a chargeable accident for surcharge or cancellation purposes.

c. Accident Reports

The Commission received testimony that the absence of accident reports prepared by law enforcement officers created opportunities for the filing of fraudulent claims. A typical scenario is the filing of a bodily injury (BI) or personal injury protection (PIP) claim by a person not involved in the accident, but who has taken advantage of the lack of official documentation

concerning the number of victims reported at the time of the accident. The former head of the Maryland Insurance Fraud Unit testified that so-called "jump-ins" were a frequent form of insurance fraud.⁸¹ Although historically law enforcement units prepared accident reports, the recent focus of such officials on crime-prevention has meant that in some accidents where no serious bodily injury is reported, law enforcement units may not respond to the accident, or if they do, no report is taken.

d. "Runners"

The Commission received compelling testimony from both the former head of the Maryland Insurance Fraud Unit and the current Associate Commissioner of the Fraud Division of the Maryland Insurance Administration concerning the use of "runners" by attorneys and health care providers. Through the use of police scanners and other techniques, runners converge on automobile accident victims, offering the services of the attorneys or health care providers for whom they work, and providing the victims information on ways to receive money as a result of the automobile accident. Victims may be offered cash up-front for visiting an attorney or clinic recommended by the runner.⁸² "Good" runners may make as much as \$3,000 a week when working with an attorney or health care provider.⁸³ One witness speculated that based on his personal knowledge of 8 to 10 runners working in Baltimore City, there could be as many as 80 to 100 runners working in the City.⁸⁴

⁸¹ Testimony of Lt. John Davis, Maryland State Police.

⁸² Testimony of Lt. John Davis, Maryland State Police.

⁸³ Testimony of Ronald A. Sallow, Associate Commissioner of Insurance Fraud Division, Maryland Insurance Administration.

⁸⁴ Id.

The testimony of both witnesses also referred to the operation of medical "clinics" whose patients were drawn primarily from runners and attorneys who recommended that the victims use the clinic. According to the testimony, some clinics only took patients who were referred from certain attorneys.⁸⁵ Much of the treatments at the clinics were performed by assistants, with trained medical personnel seldom in attendance.⁸⁶

Under current Maryland law and the Rules of Professional Conduct, attorneys are prohibited from directly or indirectly employing or any way compensating any person for the purpose of having that person solicit or attempt to solicit clients for the attorney.⁸⁷ This prohibition appears to be ineffective in Baltimore City.

e. Disciplinary Boards

The Commission received testimony from both government officials and health care providers that attorney and health care provider licensing and disciplinary boards are less than diligent in punishing licensees who engage in, promote or tolerate insurance fraud. There is evidence to suggest that licensing and disciplinary boards are reluctant to accept and process complaints from insurers or others who report insurance fraud because they view their principal mission to be quality assurance. The coordination and cooperation between these boards and the Insurance Fraud Division are currently inadequate or non-existent.⁸⁸

⁸⁵ Testimony of Lt. John Davis, Maryland State Police.

⁸⁶ Id.

⁸⁷ §10-604, Business Occupations and Professions Article, Md. Ann. Code.

⁸⁸ Testimony of Lt. John Davis, Maryland State Police, Ronald A. Sallow, Associate Commissioner of Insurance Fraud Division, Maryland Insurance Administration, Richard T. Peret, Jr., President, American Physical Therapy of Maryland, Inc. and Joel R. Kruh, Esquire, Attorney for Maryland Chiropractic Association.

2. Procurement of Automobile Insurance

The Commission heard testimony concerning the particular problem of individuals who commit fraud as part of the procurement of insurance. The two areas on which the Commission focused were misrepresentations in the insurance application and so-called "rate jumping".

a. Material Misrepresentations In The Application

Testimony on this issue focused on a recent decision by the Maryland Court of Appeals, Van Horn v. Atlantic Mutual, 334 Md. 669 (1994). In that case, the insured failed to disclose, in response to a question on the application as to whether he had a physical impairment, a history of epilepsy. The insured was subsequently involved in an automobile accident with a bicycle rider. The bicyclist claimed against the insured's liability coverage. In the course of investigating the claim, the insurer learned of the misrepresentation on the insurance application and sought to void the contract ab initio, or from the inception of coverage, and thus avoid any liability for the bicycle accident. The Court of Appeals held that the insurer was barred from voiding the policy as to any claims of persons not involved in making the representation. The Court declined to rule on whether the insurer could deny first-party benefits to the insured in light of the misrepresentation. The testimony before the Commission was that the type of misrepresentation involved in Van Horn is another source of expense for automobile insurance premiums. If an insurer would not have issued a policy if the true facts had been known at the time of application, then any claims paid as a result of the fraudulently procured policy are costs which are inappropriately borne by all policyholders.

b. "Rate-Jumping"

The Van Horn case involved what potentially may have been a material misrepresentation -- a misrepresentation which, if the true facts were known to the insurer, the insurer would not have issued the policy. The Commission received testimony about a second type of fraud-in-the-application, but not involving a material misrepresentation. This type of fraud was termed "rate-jumping" and involves a person who purposely lists an incorrect home address on the application -- an address in a lower priced rating territory. The magnitude of the problem was highlighted in an article in The Sun (Baltimore), in which several public officials were listed as rate-jumpers. The testimony of one insurance company representative suggested that as many as 26,000 Baltimore City vehicles incorrectly listed non-City addresses.⁸⁹

As noted above, this problem can be distinguished from the Van Horn type of fraud, since the insurer in a typical rate-jumping case would have issued the policy if the true facts were known -- but at a higher premium. According to the testimony received, the average premium differential in a typical rate jumping case is \$477.⁹⁰

FINDINGS:

1. Insurance fraud contributes to insurance costs. Insurance fraud can take the form of claims for nonexistent injuries and claims buildup. With respect to the former type of fraud, some data suggest Maryland has a high rate of claims for nonexistent injuries. With respect to the latter type of fraud, some data suggest that Maryland does not have a high rate of claims buildup.

⁸⁹ Testimony of Jeffrey Rouch, Nationwide Insurance Company.

⁹⁰ Id.

2. The absence of reliable accident reports contributes to opportunities to commit insurance fraud.

3. The use of "runners" by attorneys or health care providers contributes to the incidence of insurance fraud and that notwithstanding current Maryland law and professional rules prohibiting such conduct, some lawyers utilize runners.

4. Attorney and health care licensing and disciplinary boards have not been effective in combating insurance fraud.

5. All insurance consumers pay for the costs of those who procure insurance fraudulently, or those individuals who, by means of "rate-jumping", fail to pay full premiums for their insurance.

¹ E&S Unlimited, Inc., "Underlying Risk Considerations", at pp. 44-45 (1984).

² Testimony of Mark Harding, attorney for State Farm.

³ Md. and testimony of David W. Zeigler, President, Northern Insurance Company.

⁴ Testimony of Henry H. Stanley.

SECTION F. AUTOMOBILE INSURANCE MARKET PRACTICES

The Commission reviewed the automobile insurance market in Baltimore City to determine the extent to which current market practices contribute to the high rate of automobile insurance in Baltimore City. In large part this testimony was similar to that considered by the General Assembly during the passage of House Bill 923 (1995).

1. Market System

As is the case in the rest of the State, there are three automobile insurance markets in Baltimore City: standard, non- (or sub-) standard and residual. The standard market, which is most attractive to private insurers, consists of drivers who are "good" risks, those with clean driving records. The non- (or sub-) standard market, which is currently serviced by both private insurers and the Maryland Automobile Insurance Fund (MAIF), consists of drivers who are not particularly good risks but are still insurable. The residual market, which MAIF was created to serve when Maryland adopted mandatory automobile insurance, consists of drivers who are such bad risks that they are uninsurable in the private market.⁹¹

House Bill 923 (1995) was proposed by the Governor and enacted by the General Assembly to stimulate the standard and non- (or sub-) standard markets in Baltimore City by requiring private insurers to submit and implement marketing plans in Baltimore City and to market their products in the same manner in the City as in the rest of the State. It was also designed to move good risks away from MAIF and into the standard market.

⁹¹ § 243B(a), Article 48A, Md. Ann. Code.

2. Private Insurers And Agents

The Commission received testimony that some private insurers and the agents who sell their products are not as aggressive in Baltimore City as in other locations.⁹² There was discussion among Commission members as to whether this was based on racial discrimination, particularly in the placement of agents by insurers. Representatives of the insurance industry strongly denied the suggestion of racial discrimination⁹³, and assert their marketing efforts are appropriate and designed to serve drivers in Baltimore City.⁹⁴

3. MAIF And MAIF Producers

Although designed to serve the residual market only, MAIF has become active in the non- (or sub-) standard market, particularly in Baltimore City. One reason suggested for this, at least in part, has been the unwillingness of the private industry to solicit in Baltimore City. However, industry representatives testified that the private industry has been successful in "depopulating" MAIF by offering insurance to consumers who previously would have been insured by MAIF.⁹⁵ However, these representatives claim that the insurers who serve the standard and non- (or sub-) standard markets are limited in their ability to expand in the City because MAIF has subsidized rates in Baltimore City. While this has had the beneficial effect of holding rates down in Baltimore City in the non- (or sub-) standard and residual markets, it has also inhibited private insurers from competing on the basis of rates in the non- (or sub-)

⁹² R&B Unlimited, Inc., "Underlying Risk Considerations", at pp. 4-5 through 4-7.

⁹³ Testimony of Marta Harting, Attorney for State Farm.

⁹⁴ Id., and testimony of Scott W. Zeigler, Progressive Northern Insurance Company.

⁹⁵ Testimony of Henry H. Stansbury.

standard market. Two important public policy issues, therefore, are: 1) should MAIF be permitted to subsidize rates? and 2) should MAIF be permitted to write in the non- (or sub-) standard market?

MAIF accepts business through independent agents or brokers known as "MAIF producers". The Commission heard testimony that suggests that some MAIF producers engage in certain practices that contribute to the high rate of automobile insurance in Baltimore City, specifically by selling unnecessary but expensive additional coverages ("add-ons") and by financing insurance premiums, through wholly-owned subsidiaries, at excessive interest rates, sometimes exceeding 35% per annum. It was suggested that only MAIF be permitted to provide add-on coverages to MAIF drivers and that only MAIF be permitted to finance MAIF premiums. The MAIF producers and the premium finance companies that finance MAIF premiums provided testimony disputing these allegations and suggesting in particular with respect to premium financing that MAIF would be unable to finance premiums as efficiently or effectively as the private sector.⁹⁶

FINDINGS:

1. The private insurance industry is not servicing the standard and non- (or sub-) standard markets in Baltimore City as well as in other jurisdictions.
2. MAIF has been forced by market failure to service the non- (or sub-) standard market as well as the residual market in Baltimore City.

⁹⁶ Testimony of Joseph A. Schwartz, III, Attorney for the Maryland Insurance Council.

3. MAIF is making it difficult for private insurance companies to compete in the non- (or sub-) standard market in Baltimore City because MAIF is not charging adequate rates in Baltimore City.

4. MAIF drivers often unknowingly purchase unnecessary add-on coverages from MAIF producers in Baltimore City.

SECTION G. INSURANCE COMPANY PROFITABILITY AND EFFICIENCY

In an effort to fully examine all possible sources of high insurance rates for automobile drivers in Maryland, the Commission examined whether insurer profitability is a factor which increases insurance rates in Maryland. There was evidence presented that insurers in Maryland as compared to other states either paid out too little money in claims payments or collected excess premiums from their insureds.⁹⁷

The Commission heard from the Director of Research for the National Association of Insurance Commissioners, although the witness spoke from his personal professional expertise rather than as a representative of the NAIC.⁹⁸ The thrust of the testimony before the Commission was that the Maryland private passenger automobile insurance market is characterized by a few top sellers that possess significant market shares, and a large number of smaller companies that impose competitive pressure on the larger companies. To assess whether this market is performing efficiently, in the sense that profits are not excessive, experts examine various measures of profitability such as loss ratios, return on net worth, and estimated rate of return. The loss ratio measures the amount of benefits that insureds receive in relation to the premium paid. The testimony was that over the past ten years, loss ratios at the national level have been only slightly higher than in Maryland.⁹⁹ With respect to Baltimore City in particular, the data show that the loss ratio for liability coverage in Baltimore City for the period

⁹⁷ Statement of Marc Wetherhorn, Regional Director, Maryland Citizen Action Coalition.

⁹⁸ Robert W. Klein, "Structure and Performance of the Maryland Auto Insurance Market", November 13, 1995.

⁹⁹ Id., p. 7.

1990-1992 was 87%, while the loss ratio for the rest of the State was 72%.¹⁰⁰ These data suggest that in fact consumers in Baltimore City receive a higher level of benefits in relation to their premiums than do consumers in the rest of the State. In all, statistics relating to loss ratios, one measure of profitability, do not suggest that higher rates in Baltimore City are the result of excess profitability, nor are rates higher in the State as a whole due to excess profitability.

Other measures of profitability tell a generally similar story. The estimated rate of return for Maryland personal automobiles was 13.3% in 1994, with a ten-year average of 10.2%.¹⁰¹ The testimony before the Commission was that these numbers were higher than the national average but that the national average was affected in a downward direction by the very poor performance of several states. The same conclusion was reached with respect to operating profits for personal automobile insurers.

The testimony suggesting the relative benefits to the consumer from a competitive market were also supported by an examination of profits earned and rates used when a state is under a competitive rating rather than a prior approval system of regulation. In Maryland, during a period in which automobile insurance was under a prior approval system of rating (1990-1994), insurer profits were higher than during the period when a competitive rating system was in place (1985-1989).¹⁰² The explanation offered was that, under prior approval, insurers are reluctant to file for rate decreases because if experience worsens, it may be difficult to secure a rate increase, at least on a timely basis. Thus, rates may tend to be higher under a prior approval

¹⁰⁰ Testimony of Robert W. Klein.

¹⁰¹ Robert W. Klein, "Structure and Performance of the Maryland Auto Insurance Market", Table 2.

¹⁰² Id.

system, assuming there is no artificial rate suppression. The Commission notes under House Bill 923 (1994) introduced by the Governor and passed by the General Assembly, private passenger automobile insurance was placed under a competitive rating system. The testimony before the Commission was that since the passage of that Bill, there were more rate decreases filed with the Maryland Insurance Administration than rate increases.¹⁰³

Finally, the testimony suggested that consumer education was a central element to an efficiently operating insurance market.¹⁰⁴ Consumers only benefit from the competitive forces between companies if they are aware of the price difference between insurers. The Commission notes that House Bill 923 (1994) included a provision for a 1-800 telephone number operated by the Maryland Insurance Administration, and that the Maryland Insurance Administration publishes a rate guide for automobile insurance consumers in Maryland.

FINDINGS:

1. According to data submitted by the NAIC, insurance rates in Baltimore City do not appear to be caused by excessive profits by automobile insurers.
2. On a statewide basis, the testimony before the Commission was that the personal automobile insurance industry in Maryland is not inefficient or excessively profitable.
3. Competitive rating and a competitive market have beneficial effects for consumers in the form of lower rates and lower insurer profitability.
4. Consumer information and education is essential to creating and maintaining a competitive market for automobile insurance. Although adequate consumer information is available in Baltimore City, efforts at consumer education have been inadequate.

¹⁰³ Testimony of Linas Glemza, Actuary, Maryland Insurance Administration.

¹⁰⁴ Testimony of Robert W. Klein.

SECTION H. HIGHWAY SAFETY

The Commission received data and testimony, primarily from the Insurance Institute for Highway Safety, that certain highway safety measures can serve to limit accidents and lower automobile insurance costs.

1. Enforcement Of "Red-Light" Laws

The data presented show that generally a large proportion of urban crashes occur at intersections and that a principal contributing factor in such accidents is the failure to obey traffic control devices.¹⁰⁵ Drivers running red lights constitute a major portion of intersection crashes.¹⁰⁶ Typically, those who are red-light violators have more tickets for moving violations, generally have poorer driving records and are less likely to wear seat-belts than other drivers. Although actual cost savings estimates were not provided to the Commission, clearly a reduction in red-light violators would serve to lessen the accident rates, particularly in Baltimore City and other urban areas.

Two possible measures were suggested as a means to reduce the incidence of red-light violations. The first is the use of red-light cameras. These are cameras that record the license plates of cars entering intersections after a red-light. Tickets are mailed to the vehicle owner based on the information in the photograph. The cost of the camera and installation may be \$50,000. Studies show that when used, red-light cameras may decrease right angle collisions 32%, with a corresponding decrease in injuries by 10%.

¹⁰⁵ Characteristics of Red Light Violators, Insurance Institute for Highway Safety, October, 1994.

¹⁰⁶ Id.

The second measure to reduce red-light violations is to lengthen the duration of the yellow traffic signal, which has been shown to reduce the incidence of vehicles entering an intersection on the red-light.

2. Primary Enforcement Of "Seat-Belt" Laws

The Commission received information concerning a primary seat-belt law enforcement program that was established in North Carolina in 1993 entitled "Click-It or Ticket". The program was a cooperative effort of law enforcement, the governor, community groups and other leaders to increase the usage of seat-belts and child safety seats in that state. Seat-belt "checkpoints" are the focal point of the program. According to the statistics submitted to the Commission, seat-belt usage in the State rose from 64% before the program was implemented to 80% immediately after the initial program implementation. "Click-It or Ticket" savings were estimated at \$37.3 million from reduced fatalities and \$13.85 million from reduced serious injuries, for a total savings of \$51.16 million.¹⁰⁷

The Institute also cited studies of other states in which "primary" enforcement seat-belt laws were enacted and in which seat-belt usage increased substantially. These states include New York and California. Maryland currently allows enforcement of its mandatory seat belt law only as a secondary action when a police officer detains a driver for another violation of law.¹⁰⁸

3. Enforcement Of "Speed-Limit" Laws

The Institute submitted to the Commission studies concerning the use of radar detectors and their impact on vehicle speed. Excessive speed is a contributing factor in automobile

¹⁰⁷ Data submitted by the North Carolina Governor's Highway Safety Program.

¹⁰⁸ §22-412.3(g), Transportation Article, Md. Ann. Code.

crashes. For example, one study in Kentucky suggested that speed was a factor in 9% of all crashes and 37% of fatal crashes. Furthermore, crash damage and injury severity increase exponentially as speed increases. The studies submitted show that radar detectors are widely used to evade speed limit restrictions.¹⁰⁹ Thus, to the extent banning devices whose only purpose is to evade speed limit restrictions reduces the number of speeding vehicles, accident severity and frequency should decrease.

FINDINGS:

1. Highway safety factors contribute to the severity and frequency of automobile accidents.
2. In urban areas, failure to obey traffic control devices, such as stoplights, contributes to automobile accidents. In Baltimore City, there appears to be an increasing disregard for stoplights.
3. The use of seat-belts reduces the level of injuries sustained in accidents and therefore reduces the costs of compensating automobile accident victims.
4. On highways, speed in excess of the legal limit contributes to both the frequency and severity of accidents.

¹⁰⁹ Testimony of Charles A. Hurley, Insurance Institute for Highway Safety.

PART II

RECOMMENDATIONS

SECTION A. GENERAL DISCUSSION

There are two groups of consumers affected by automobile insurance reform: those who purchase automobile insurance and those who suffer injuries in automobile accidents. The former are insureds; the latter are claimants. The purpose of the Commission is to develop recommendations to reduce the cost of automobile insurance for insureds in Baltimore City without depriving claimants adequate compensation for bodily injury and property damage arising out of automobile accidents in which the claimants are not at fault.

To achieve this purpose, the Commission is proposing a series of recommendations to the Governor that require legislative action. Although the purpose of the Commission is to reduce rates in Baltimore City, its recommendations are statewide so that all residents of the State may benefit from reduced automobile insurance costs.

The Commission's legislative recommendations fall into two broad categories: (i) those that reduce the cost of automobile insurance by reducing the underlying loss costs covered by automobile insurance, and (ii) those that reduce the cost of automobile insurance by eliminating mandatory coverages. The former recommendations are the more meaningful because they reduce insurance costs without reducing coverage. It is, therefore, the Commission's hope that the recommendations relating to underlying loss costs will reduce the average cost of mandatory automobile insurance coverages in Baltimore City by at least 20%. This goal was selected because, in the opinion of the Commission, it is meaningful and achievable. The recommendations relating to the elimination of mandatory coverages would then give the

automobile insurance consumer in Baltimore City and elsewhere the option of reducing automobile insurance costs even more by foregoing certain duplicative or unwanted coverages.

The Commission has decided not to make legislative recommendations in four general areas. First, the Commission does not recommend that the General Assembly eliminate or modify territorial rating by insurance companies. Arbitrarily shifting automobile insurance costs from Baltimore City to other jurisdictions for the sole purpose of lowering premiums in Baltimore City is neither fair nor politically feasible.

Second, the Commission does not recommend that the General Assembly adopt a no-fault system for compensating accident victims. While the evidence suggests that a pure no-fault system will reduce the underlying loss costs covered by automobile insurance, no state has yet adopted a pure system. In light of the history of no-fault proposals in Maryland, it appears unlikely that a no-fault system capable of reducing costs would be enacted by the General Assembly. Indeed, a no-fault system capable of being enacted by the General Assembly may actually increase costs. Some states have adopted or are considering "choice" no-fault in which each insured decides whether to remain within the current tort system or opt into a no-fault system. While the merits of consumer choice are obvious and while in theory a "choice" system produces substantial savings, it is not apparent to the Commission, in light of past legislative history, that a "choice" system capable of being enacted by the General Assembly will produce greater savings than can be produced by the recommendations set forth in this Report. The "choice" no-fault plan for which the Institute for Civil Justice recently reported significant savings was one in which all access to the courts was denied to those persons who chose no-fault, a concept the General Assembly is unlikely to embrace. Moreover, some of the cost

savings attributable to any no-fault system are achieved at the expense of accident victims, who may receive less than a full recovery because of limited access to the court system.

Third, the Commission makes no additional recommendations regarding market reform. The reforms initiated by the Governor and enacted by the General Assembly in House Bill 923 (1995) should be given an opportunity to work before more reforms are instituted. Moreover, any decision to reform MAIF or the residual market should await implementation of the recommendations contained in this Report to reduce underlying costs. Otherwise the risk exists that automobile insurance costs in Baltimore City will increase if the role of MAIF is modified prematurely.

Fourth, the Commission has declined to make any recommendations on the impact the enactment of a comparative negligence standard might have on automobile insurance rates. This issue was the subject of hearings by the Commission at the request of the Governor because this proposed change to Maryland's tort law was identified as likely to be the subject of consideration by the General Assembly during the 1996 legislative session. The Commission heard testimony from the opponents of comparative negligence that insurance rates would increase if Maryland moved to a comparative negligence standard. However, the Commission notes that the vast majority of states operate under some form of comparative negligence. No data were submitted by any particular insurer comparing their loss experience in a state before and after the state changed from contributory to comparative negligence. A study was submitted which compared Delaware's loss costs to those of Maryland during the period in which Delaware moved to a

comparative negligence standard from a contributory negligence standard.¹¹⁰ This suggested costs would increase under the comparative standard, although at the hearing other explanations for the increase in Delaware's costs were offered. It is clear that a more detailed analysis of the issue would be required before it could be said that such a change would increase costs. However, it seems clear to the Commission that whether or not the change would increase costs, there was no testimony presented to show that it would decrease insurance costs. Because the Commission's charge is to focus on those areas that decrease the costs of insurance, and there is no evidence to suggest that comparative negligence would decrease costs, the Commission declined to make any recommendation on this subject.

Of all the areas investigated by the Commission, fraud evoked the clearest response. There is no room in the system for fraud. Fraud must be rooted out aggressively and completely. In House Bill 923 (1995) the Governor and the General Assembly commenced the process by strengthening the Insurance Fraud Division. However, the system still requires greater enforcement efforts, particularly by the Attorney Grievance Commission and the several health care provider licensing and disciplinary boards. In addition, the opportunities for committing fraud must be reduced. The Commission believes that even the most aggressive of fraud detection efforts will not prevent all fraud. The subjective nature of soft-tissue injuries makes detection of such fraud difficult, and the proof of such fraud in a criminal case particularly difficult. Consequently, the Commission believes that the efforts of the Insurance Fraud Division can be complemented with changes to Maryland's compensation system that

¹¹⁰ Joseph E. Johnson, "An Analysis of the Relative Cost of the Adoption of Comparative Negligence - A Paired State Study: Delaware and Maryland", 1989. See also Daniel T. Winkler, et al. "Cost Effects of Comparative Negligence: Tort Reform in Reverse", CPCU Journal, June 1991.

reduce the incentives to commit fraud. Many of the Commission's recommendations are intended to tighten enforcement and limit opportunities so that the costs associated with insurance fraud can be greatly reduced, if not eliminated entirely.

Race was the most troubling and difficult issue which the Commission had to confront. The Commission received no credible evidence that automobile insurance rates are excessively high in Baltimore City because of intentional race discrimination by the insurance industry. The Commission did receive evidence to suggest a possible correlation between the racial composition of rating territories and automobile insurance rates. The Commission cannot ignore the possibility that the territorial rating practices of some insurance companies may have a disproportionate impact on African-Americans in Baltimore City and perhaps in other areas of the State.

The Commission believes that the General Assembly has given the Insurance Commissioner broad and sufficient authority to prohibit, prevent and eliminate race discrimination in insurance. The Commission also believes that the Insurance Commissioner has the authority to examine and to regulate the territorial rating practices of insurers within the framework established by the General Assembly. Although, in the past, the Maryland Insurance Administration (MIA) has been diligent in ensuring that rates within each territory are actuarially justified, less regulatory attention has been given the justification or rationale for the way in which particular rating territories are established and their boundaries drawn.

The Commission notes that the Insurance Code prohibits rates from being "based partially or entirely on geographic area itself, as opposed to [being based on] underlying risk considerations, even though expressed in geographic terms." The Commission recommends that

the Maryland Insurance Administration (MIA) adopt regulations to define the "underlying risk considerations" that may be used by insurance companies in establishing or applying rating territories. The Commission also recommends that the Maryland Insurance Administration (MIA) investigate the relationship between the racial composition of rating territories and automobile insurance rates and, if appropriate, adopt regulations that will ameliorate the impact of territorial rating on African-Americans in Baltimore City and elsewhere without arbitrarily shifting automobile insurance costs from one territory to another.

In making its recommendations, the Commission wishes to stress the importance of and need for consumer education. House Bill 923 (1995) required the Insurance Commissioner to establish a toll-free telephone number to assist and educate consumers on automobile insurance, providing callers educational materials such as a rate guide or other list of agents and insurers. It is clear from the testimony received by the Commission that even more is needed. Many insurance consumers in Baltimore City simply do not know where to go to get the lowest rates. They are not aware of all their options. Although the Commission does not make any specific recommendations on consumer education, it encourages grass-root community organizations to focus their efforts on educating the drivers in their community -- providing information about alternatives, how to "shop around", how their own behavior influences risk (and therefore cost) and how fraudulent behavior impacts rates. In the end, public education may be even more effective than legislation or regulation in addressing the high cost of automobile insurance in Baltimore City. The Commission believes such educational efforts are an important part of ensuring consumers get the lowest rates possible, and urges the Insurance Commissioner to

continue new and innovative ways to enhance the consumer education functions in the Maryland Insurance Administration.

Finally, the Commission urges the Governor to be vigilant in ensuring that any cost-savings achieved by the Commission's recommendations be passed on to consumers in the form of lower rates. All of the Commission's work will go for naught if the only result is to increase the profitability of insurance companies.

SECTION B. SPECIFIC RECOMMENDATIONS¹¹¹

Based upon the findings set forth in Part I of this Report, the Commission recommends the following:

1. Legislation To Eliminate Multiple Recoveries For The Same Injury

a. Personal injury protection (PIP) benefits may be paid only to reimburse the insured for expenses not otherwise covered by health or disability benefits.

Explanation and justification: The Commission received testimony that the majority of PIP benefits are paid for medical expenses, and therefore PIP duplicates the function of health insurance for those who have it. This recommendation mandates a coordination of benefits with applicable health and disability insurance, and requires that any PIP premium be reduced to reflect the secondary nature of PIP. Current law authorizes, but does not require, the coordination of benefits between a PIP carrier and health and disability insurers. The testimony before the Commission was that when such coordination occurs, generally PIP remains primary and it is therefore the health insurance premium, not the automobile insurance premium, that is reduced.¹¹²

b. Uninsured motorist (UM) benefits must be reduced by compensation paid or payable from collateral sources.

¹¹¹ Exhibit 11 summarizes the final vote by Commission members on each Commission recommendation. The 6 State legislators who served on the Commission abstained from voting.

¹¹² The Governor should be aware that this recommendation may have the potential of shifting costs from the automobile insurance system to the health insurance system. While everyone acknowledges that there are no data available to measure the extent of this cost-shifting potential, the Commission agrees with the Chairman of the Maryland Health Care Access and Cost Commission that affordable automobile insurance should not be achieved at the expense of affordable health benefits coverage. (Letter from Dr. Donald Wilson, November 10, 1995.)

Explanation and justification: The Commission found that uninsured motorist (UM) coverage compensates victims for damages, including lost wages, medical expenses, resulting from an accident with an uninsured vehicle. Current law permits recovery of such damages from other collateral sources, which results in higher UM premiums that would be if UM benefits were reduced by collateral sources.

c. Recoveries from third-party liability insurers and judgments on third-party claims must be reduced by compensation paid or payable from collateral sources.

Explanation and justification: The Commission found that Maryland's current system of compensation allows automobile accident claimants to receive PIP benefits from their automobile insurance policies, and in some cases health insurance benefits from the claimant's health insurer, and then to recover all injury-related expenses in any third-party claim against an at-fault driver. The PIP statute expressly prohibits a PIP carrier from pursuing a right of subrogation against the at-fault party to recover the duplicative benefits. Although the law does permit health insurers to recover payments made through subrogation, the testimony was that this was not always done.

This practice of allowing recovery from multiple sources increases insurance premiums system-wide. While an insured may voluntarily choose to pay two separate premiums to separate insurers in return for the right to recover duplicative benefits, the Commission does not believe there is any entitlement to recover benefits from a third-party carrier, to whom the injured party has paid no premiums, for damages that have already been compensated. While this practice puts dollars in the pockets of one set of consumers, claimants, it does so at the direct expense of the other group of consumers, those who purchase automobile insurance.

If third-party claims were reduced by sums recovered by just one collateral source, PIP, then each third-party claim payment in which PIP were applicable, would be reduced by up to \$2,500.00. Thus, reducing double recovery should substantially reduce the part of the premium identified by the Commission as the largest cost component of the overall premium, the portion attributable to bodily injury (BI) coverage.

2. Legislation To Reduce Medical Costs And Attorney Involvement In Bodily Injury Claims

a. Insurers may offer personal injury protection (PIP) with a managed-care option; major insurers and the Maryland Automobile Insurance Fund (MAIF) must offer personal injury protection (PIP) with a managed-care option for soft-tissue injuries.

Explanation and justification: The Commission found Maryland's system for compensating accident victims creates opportunities and incentives for unscrupulous claimants, attorneys and health care providers to over-treat injuries, or treat non-existent injuries, in order to maximize recoveries. While representatives of all groups deplored such conduct, all conceded that there is the potential and the practice of such conduct. While the Commission agrees that such conduct is fraudulent and should be prosecuted, the testimony also indicated that the subjective nature of soft-tissue injuries makes such conduct difficult in some cases to identify, and hard to prove by criminal standards.

One method to reduce any opportunity for over-treatment of injuries is to require, at least for major insurers, that PIP benefits for the treatment of soft-tissue injuries be available in a managed-care setting. Under this recommendation, the PIP carrier or a managed-care entity

with whom the PIP carrier could contact, would limit the over-utilization that can occur under the current system. Because the coverage is optional, an insured who wanted the freedom to pursue his or her own course of medical treatment could do so by opting for standard PIP coverage. The Commission received testimony that other states, particularly New York and Colorado, have provided for managed-care PIP, and that substantial savings are attainable under this approach.

b. i. Health care providers may not charge more for the treatment of soft-tissue injuries arising from automobile accidents than would be reimbursed by Medicare.

ii. Third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents in an amount greater than would be reimbursed by Medicare.

iii. Third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents if a peer review organization determines that the treatment fails to conform to professional standards of performance or is medically unnecessary.

Explanation and justification: Because of the incentives for over-treatment and fraud inherent in Maryland's automobile accident compensation system described in recommendation 2.a., the Commission recommends that additional steps be taken to limit unnecessary and excessive claims. The Commission received testimony that these recommendations, which limit the fees paid to providers who treat soft-tissue injuries arising out

of automobile accidents and provide for peer review of medical treatments to accident victims, have successfully reduced automobile insurance premiums in Pennsylvania.

c. **Attorneys may not send targeted direct-mail solicitations to automobile accident victims or their relatives for 30 days following an accident.**

Explanation and justification: The Commission found that Maryland in general and Baltimore City in particular have one of the highest rates of attorney involvement for automobile accident cases in the country. Furthermore, the Commission found that Maryland has the highest rate of attorney's recommending to claimants particular health care providers. Finally, the Commission found that Baltimore City has one of the highest rates of BI claims per 100 PD claims in the nation, and also leads the nation in certain statistics concerning potentially fraudulent claims. While a cause and effect relationship between the rate of attorney involvement and the other factors listed is difficult to establish because other factors such as claimant behavior influence the high rate of claims filed, the Commission found there is a correlation between the high rate of attorney involvement and the high rate of BI claims in Maryland and Baltimore. Consequently, the Commission believes a thirty-day waiting period for direct-mail solicitations by attorneys to automobile accident victims, such as that adopted in Florida and recently held constitutional by the Supreme Court, is a reasonable measure to counterbalance the relatively large role attorneys play in the claiming process in Maryland.¹¹³

3. Legislation To Reduce Insurance Fraud

a. **An insured may not recover uninsured motorist (UM) benefits without physical evidence of contact between the insured's vehicle and the hit-and-run vehicle.**

¹¹³ Florida Bar v. Went For It, Inc., 132 L.Ed 2d 541 (1995).

Explanation and justification: The Commission found that UM coverage is particularly susceptible to abuse and fraud. Insureds who accidentally cause damage to their own vehicle may claim the damage was caused by a hit-and-run or "phantom" vehicle, and collect under their UM coverage. This practice increases payments under UM coverage, and thus increases the cost of UM insurance to all consumers of automobile insurance. The so-called "contact rule" helps to reduce unnecessary and fraudulent UM payments.

b. An accident reporting unit shall be established within the Baltimore City police department as a pilot program, staffed by non-police personnel and funded by the insurance industry, to prepare written accident reports at the accident scene.

Explanation and justification: The Commission received testimony that unless an automobile accident is reported to involve serious bodily injury, local or state police may not, and typically do not, respond to the scene of the accident. While the need for over-worked police units to prioritize calls is understandable, the lack of a police report from an accident scene creates the opportunity for insurance fraud. Without a credible report taken at the scene of the accident concerning the number of victims, automobiles, and other pertinent data, the potential exists for the number of claimants, and the nature of injuries, to be exaggerated. Because the benefits of a dedicated accident reporting unit, relative to its costs, cannot be accurately predicted, a pilot program limited initially to Baltimore City is a positive first step.

c. i. The Insurance Fraud Division must refer evidence of attorney or health care provider fraud to the appropriate licensing and disciplinary boards.

ii. Attorney and health care provider licensing boards must report to the Insurance Fraud Division on any case referred to them by the Division in which disciplinary action is not taken and the reasons why disciplinary action was not taken.

iii. The license of any attorney or health care provider convicted of insurance fraud must be revoked.

Explanation and justification: The Commission found that witnesses representing attorneys and health care providers before the Commission denounced any fraudulent conduct that may occur in a small segment of the professional population. However, under current practice, evidence of fraud on the part of these professionals is not always referred to the appropriate professional licensing board for disciplinary action and disciplinary action is not always taken.

d. A person may not pay or receive compensation for directing or referring an automobile accident victim to an attorney or health care provider.

Explanation and justification: The Commission received vivid testimony from a state police fraud investigator and the Associate Commissioner of the Insurance Fraud Division regarding practices used by certain attorneys and health care providers to attract customers. No one condones the use of paid "runners" to direct accident victims to particular attorneys or clinics. Arizona and Georgia have adopted laws to prohibit this practice.

e. i. Before a claim has been made, an insurer may cancel and rescind an insurance policy immediately and without prior notice if the insured makes misrepresentations in the application for automobile insurance and the insurer would not

have issued the policy if the true facts had been made known to the insurer as required by the application.

ii. After a claim has been made, an insurer may deny first-party benefits to an insured who makes misrepresentations in the application for automobile insurance if the insurer would not have issued the policy if the true facts had been made known to the insurer as required by the application.

Explanation and justification: If a person procures insurance fraudulently, the cost of that fraud is borne by the drivers who procured their insurance honestly. The only way effectively to limit this cost-shift is to permit insurers immediately and without prior notice to cancel and rescind the policy if the fraud is discovered before a claim is made and to deny first-party benefits to the fraudulent party if the fraud is discovered after a claim is made.

4. Legislation To Reduce The Number Of Mandatory Coverages

a. Insurers must make personal injury protection (PIP) available to all insureds; an insured does not have to purchase personal injury protection (PIP).

Explanation and justification: The Commission found that even when waived by the named insured, PIP still constitutes a substantial portion of the automobile-premium because the "waived" PIP coverage still applies to passengers and pedestrians. For some MAIF insureds in Baltimore City, this may be as much as \$190.00. Requiring that PIP, when waived, be waived as to all persons does not restrict the ability of passengers or pedestrians to make claims under their own PIP coverage, or to make third-party claims against at-fault parties if there is no PIP coverage available to them.

b. i. Insurers must make uninsured motorist (UM) coverage available to all insureds; an insured does not have to purchase uninsured motorist (UM) coverage.

ii. An insured who does not purchase uninsured motorist (UM) coverage may not claim against the Unsatisfied Claim and Judgment Fund.

Explanation and justification: The Commission found uninsured motorist (UM) coverage is a mandated first-party coverage that compensates insureds for bodily injury and property damage caused by at-fault uninsured drivers or phantom or hit-and-run vehicles. Much of the protection provided by UM coverage may be provided from other sources. For example, medical bills resulting from an accident caused by an uninsured motorist may be paid by the victim's health insurance, or the insured's PIP coverage if he or she has not waived PIP. Lost wages up to \$2,500.00 may be paid by PIP as well. With respect to property damage (PD) coverage, as noted in the report, the UM statute is vague as to whether it was originally intended to cover property damage, and, as described above, this coverage is susceptible to fraudulent claims. Claimants should have the option of purchasing coverage that serves mainly to protect the value of their own vehicle.

Therefore, the Commission believes insureds should have the choice to waive UM coverage as well as the other mandatory first-party coverage, PIP.

5. Regulation Of Territorial Rating Practices

a. The Maryland Insurance Administration (MIA) should adopt regulations to define the "underlying risk considerations" that automobile insurers may use in establishing or applying rating territories.

b. The Maryland Insurance Administration (MIA) should

- i. investigate the relationship between the racial composition of rating territories used by insurance companies and automobile insurance rates; and
- ii. if appropriate, adopt regulations to ameliorate the impact of territorial rating practices on African-Americans in Baltimore City and elsewhere without arbitrarily shifting automobile insurance costs from one territory to another.

Explanation and justification: The Commission examined the rating practices of insurers and the law regulating those practices. The law authorizes insurers to express rates in geographic terms, so long as those rates are based on "underlying risk considerations" and are not solely or partially based on geographic area itself. The existing law also expressly prohibits any discrimination based on race, creed, color, or national origin.

The Commission heard testimony of an apparent correlation between the high cost territories in Baltimore City and elsewhere and the minority population within those territories. While this matter is currently before the Human Relations Commission, the Commission believes that the State insurance regulator should take additional steps to address these concerns.

First, as noted in the extensive report submitted by R & B Limited, the legal linchpin of territorial rating is the requirement that geographic distinctions be based on "underlying risk considerations." As noted in the R & B report, this term is undefined in statute or regulation. Although the Attorney General has opined that the practice followed by insurers now, justifying territories based on historical loss experience, constitutes an underlying risk consideration, the Commission believes that the interpretation and enforcement of this crucial regulatory position should rest with the State insurance regulator. Consequently, the Commission believes this term should be the subject of regulations to clarify its meaning.

Furthermore, the Commission believes that the State insurance regulator, either as part of the enforcement of the unfair discrimination provisions of the Insurance Code or as part of the determination of what constitutes acceptable underlying risk considerations, should investigate the alleged correlation between rating territories and minority population and, if appropriate, adopt regulations, within the legislative framework on territorial rating established by the General Assembly and without arbitrarily shifting automobile insurance costs from one territory to another, to ameliorate the impact of territorial rating practices on African-Americans in Baltimore City and elsewhere.

6. **Legislation To Reduce Accident Costs**

- a. **Cameras may be installed at high-risk intersections to photograph red-light violations.**
- b. **Police may stop a vehicle for a seat-belt or child-restraint violation.**
- c. **No person may use or operate a radar detector.**

Explanation and justification: A clear way to reduce automobile insurance costs is to reduce automobile accident costs. A number of states, including most notably North Carolina, have undertaken aggressive highway safety measures to reduce accident costs. Information provided by the Insurance Institute for Highway Safety indicates that red-light cameras, seat-belt enforcement and radar detector prohibition are safety measures that have proven effective in reducing costs in other jurisdictions.

SECTION C. THE TILLINGHAST REPORT

The Insurance Commissioner, at the request of the Commission and with the approval of the Governor, engaged an independent actuary to estimate the cost savings attributable to the foregoing recommendations. The firms of Tillinghast, a Towers Perrin company, and Miller, Rapp, Herbers, Brubaker & Terry, Inc. were retained and prepared an "Analysis of Proposed Statutory Reforms" (hereinafter referred to as the "Tillinghast study"). While the entire Tillinghast study should be consulted for a full understanding of its findings and the assumptions underlying the analysis of the recommendations, this Section briefly summarizes the conclusions of the Tillinghast study.

The Tillinghast study estimated that in the aggregate, the reforms analyzed would decrease statewide losses by \$830 million. When translated to premium reductions, the Tillinghast study estimates a 21.5% reduction statewide and a 24.2% reduction in the City of Baltimore. The recommendations which contribute most to the savings are those relating to the elimination of duplicate recoveries. These recommendations, if adopted by the Maryland General Assembly in their "purest" form, were estimated to potentially save 27% off the BI premium, with a 14.8% savings to the overall premium. This confirms the Commission's findings that the presence of duplicate recoveries adds substantially to the costs of insurance. Those recommendations which seek to reduce the costs of soft-tissue injuries, through the implementation of a system of utilization review for such injuries and the use of a Medicare-based fee schedule, also could substantially reduce premiums, with the expected savings projected at 8.9%. Other savings estimated in the Tillinghast study were proposals to make PIP secondary to other coverages -- 4.8%; proposals on managed-care PIP -- 1.5%; restrictions on

attorney solicitations -- 0.6%; and implementation of the so-called "contact" rule for UM -- 0.02%.

The Commission recognizes that these estimates are based on several assumptions, some optimistic, that could affect the actual level of savings. For example, a substantial portion of the savings in the study is attributable to the multiplier effect, where reductions in economic damages results in reductions in the noneconomic damages by some multiple. Also, if as a result of the recommendations, economic losses currently compensated by a first-party coverage were shifted to an insured's BI coverage, there could be an increase in system-wide BI costs. In addition to those general assumptions, the analysis of each specific recommendation contains by necessity, other specific assumptions. Still, the Commission is encouraged by the level of savings attributable to the recommendations.

The Commission notes that many recommendations with the potential for substantial savings, such as those relating to fraud and highway safety, were not priced by Tillinghast because of the unavailability of actuarially suitable data. This does not mean, however, that savings from those recommendations will not be achieved, only that their precise magnitude is difficult to measure. Thus, overall savings from all the recommendations could be expected to be greater than the savings attributable only to the recommendations priced by Tillinghast.

The Commission received testimony from interested parties on the Tillinghast study. In general, these comments, presented primarily from the insurance industry, suggested that the projected savings were based on optimistic, or incorrect, assumptions. For example, although the industry had advocated that laws passed by other states could serve to reduce costs in Maryland if adopted here (i.e. the managed-care PIP system in Colorado; the Pennsylvania law

that limits certain payments to providers to a percentage of the Medicare fee schedule), the industry subsequently argued that actual savings in those states are not directly comparable to savings which could be achieved in Maryland with a similar system, due to differences in state laws, market conditions, and other factors. However, the industry acknowledged that if one accepts the assumptions made, the methodology in the Tillinghast study is generally valid.

Finally, there are several caveats in the Tillinghast study of which the Commission takes note. First, to the extent that the recommendations are not enacted or materially altered, the projected savings may be lessened. Second, while the Tillinghast study utilizes "best-case" assumptions with respect to certain recommendations, the Commission believes this best serves the Governor and the General Assembly as the recommendations are considered. Finally, the Commission recognizes that the estimates presented by Tillinghast represent average savings and actual savings will vary from insurer to insurer.



The State of Maryland

Executive Department

EXECUTIVE ORDER
01.01.1995.05

Governor's Commission on Baltimore City Automobile Insurance Rate Reduction

WHEREAS,

The cost of automobile insurance for residents of Baltimore City is high compared to the cost for residents of suburban and rural areas of the State;

WHEREAS,

Some Baltimore City drivers may pay two, three, or even four times the insurance rates that a comparable driver in other regions pay;

WHEREAS,

Because State law mandates that automobile owners purchase automobile insurance, residents of Baltimore City who own automobiles have no choice but to purchase high cost insurance;

WHEREAS,

The high cost of insurance is a financial burden to City residents and detracts from the quality of life in the City;

WHEREAS,

There is disagreement over what factors contribute to these high rates in Baltimore City, although particular concerns have been expressed over the practice of territorial rating used by insurance companies, as well as the possibility of redlining by the insurance industry;

WHEREAS,

Although several possible solutions to the problem of high insurance rates have been offered in the past, ranging from reducing underlying costs to redistribution of costs equally among all drivers, a comprehensive analysis of the underlying factors that cause higher insurance rates in Baltimore City is necessary prior to enacting reforms to address this problem; and

WHEREAS,

In studying the automobile insurance market in Baltimore City, the continued role of the Maryland Automobile Insurance Fund must be considered, as well as the best manner to privatize the Fund if it should not be continued in its current form;

NOW, THEREFORE,

I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. There is a Commission on Baltimore City Automobile Insurance Rate Reduction.

B. Scope of the Commission:

(1) The Commission shall:

(a) Examine those factors which may cause or contribute to high automobile insurance rates in Baltimore City, including an analysis of the following practices:

(i) The rating practices of automobile insurers, including territorial rating, and any other practices that may relate to redlining or other unfair discrimination; :

(ii) The role of attorney involvement in auto insurance disputes;

(iii) Practices by health care providers in treating victims of automobile accidents; and

(iv) Any actions by insureds or claimants that may contribute to or cause high rates.

(b) Review proposals considered or enacted in other states intended to reduce the cost of automobile insurance, including, if appropriate, modification of insurer rating practices, tort reform, and medical care cost containment initiatives.

(c) Based on the Commission's review under subparagraphs (a) and (b) above, recommend appropriate changes to the laws of this State that are designed to reduce the cost of automobile insurance in Baltimore City.

(d) Recommend whether the proposals suggested under subparagraph (c) be extended to other jurisdictions in the State.

(e) Review and make recommendations concerning the role of the Maryland Automobile Insurance Fund in the automobile insurance market, whether the functions of the Fund should be privatized and, if so, in what manner.

(2) The Commission shall issue a preliminary report to the Governor by July 15, 1995 and a final report by October 1, 1995.

C. Membership and Procedures.

(1) The Commission shall be composed of the following seventeen members:

(a) Three members of the Senate designated by the President of the Maryland Senate;

(b) Three members of the House of Delegates designated by the Speaker of the Maryland House of Delegates;

(c) Two members designated by the Mayor of the City of Baltimore;

(d) The Insurance Commissioner or designee; and

(e) Eight members of the general public to be appointed by the Governor.

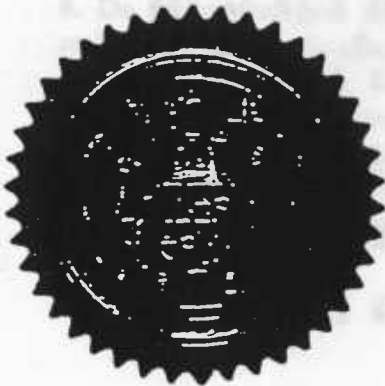
(2) The Governor shall appoint the Chairperson of the Commission

(3) The appointed members of the Commission serve at the pleasure of the Governor.

(4) The members of the Commission may not receive any compensation for their services. The members may be reimbursed for reasonable expenses incurred in the performance of their duties in accordance with the standard travel regulations and as provided in the State budget.

(5) The Commission shall be staffed by personnel from the Governor's Legislative Office with assistance from the Maryland Insurance Administration.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th day of February, 1995.



Parris N. Glendening
Parris N. Glendening
Governor

ATTEST:

John T. Willis
John T. Willis
Secretary of State

SHOPPING FOR INSURANCE:

1. Obtain a copy of our most current rate guide.
2. Use your telephone book's "yellow pages" classified guide for assistance in contacting companies or agencies.
3. Ask for "price quotes" from several insurers or agents.
4. Be ready to answer questions. All companies require specific information before a determination can be made regarding eligibility and premium amount. Have your current policy in front of you before you make the call.
5. Inquire about discounts. For example, premium reductions may be granted based on the insuring of multiple vehicles, safety and theft devices, good driving record, limited vehicle usage, or similar factors which may provide cost savings for a company.
6. Realize that you may not meet the requirements for certain companies. For example, a less than clean driving record over the previous three years (accidents, points) may limit the companies for which you may be accepted as a new insured.
7. Before you change companies, compare policies. Does the proposed policy have at least the same coverage as your current policy?
8. Do not cancel your current policy until a replacement policy is in effect.

Although we cannot recommend specific companies or agents, if you have questions about purchasing private passenger auto coverage, contact the Maryland Insurance Administration at 1-800-880-8072. This is a toll free call.



PARRIS N. GLENDENNING,
GOVERNOR

DWIGHT K. BARTLETT, III,
INSURANCE COMMISSIONER

PRIVATE PASSENGER AUTOMOBILE INSURANCE RATES FOR MARYLAND

HOW TO USE THIS RATE GUIDE

Auto rates vary upon individual circumstances. As an example, rates in this guide are based on a very specific set of policyholder characteristics, reflecting an insured's age, marital status, sex, drivers education courses, vehicle usage, and area of residence. Comparing insurance rates, in the area where you live, may provide a starting point for your own comparison shopping. Agents for companies, or companies who write policies directly, can provide the exact rates for your specific insurance characteristics. Please understand that the rates quoted to you will be specific to your situation and it is not likely that they will be the same rates as those listed in this guide.

ANNUAL RATES EFFECTIVE JUNE 1, 1995

Rates used in this guide assume that a driver has had a driver's education course, and is principal owner and operator of the vehicle. Coverages: (liability coverages are minimum coverages for compliance with State law) \$20,000 bodily injury for individual or \$40,000 bodily injury per occurrence; \$10,000 for property damage; \$2,500 for person injury protection; and \$20,000 for bodily injury per individual, or \$40,000 per occurrence, and \$10,000 property damage for uninsured motorists coverages.

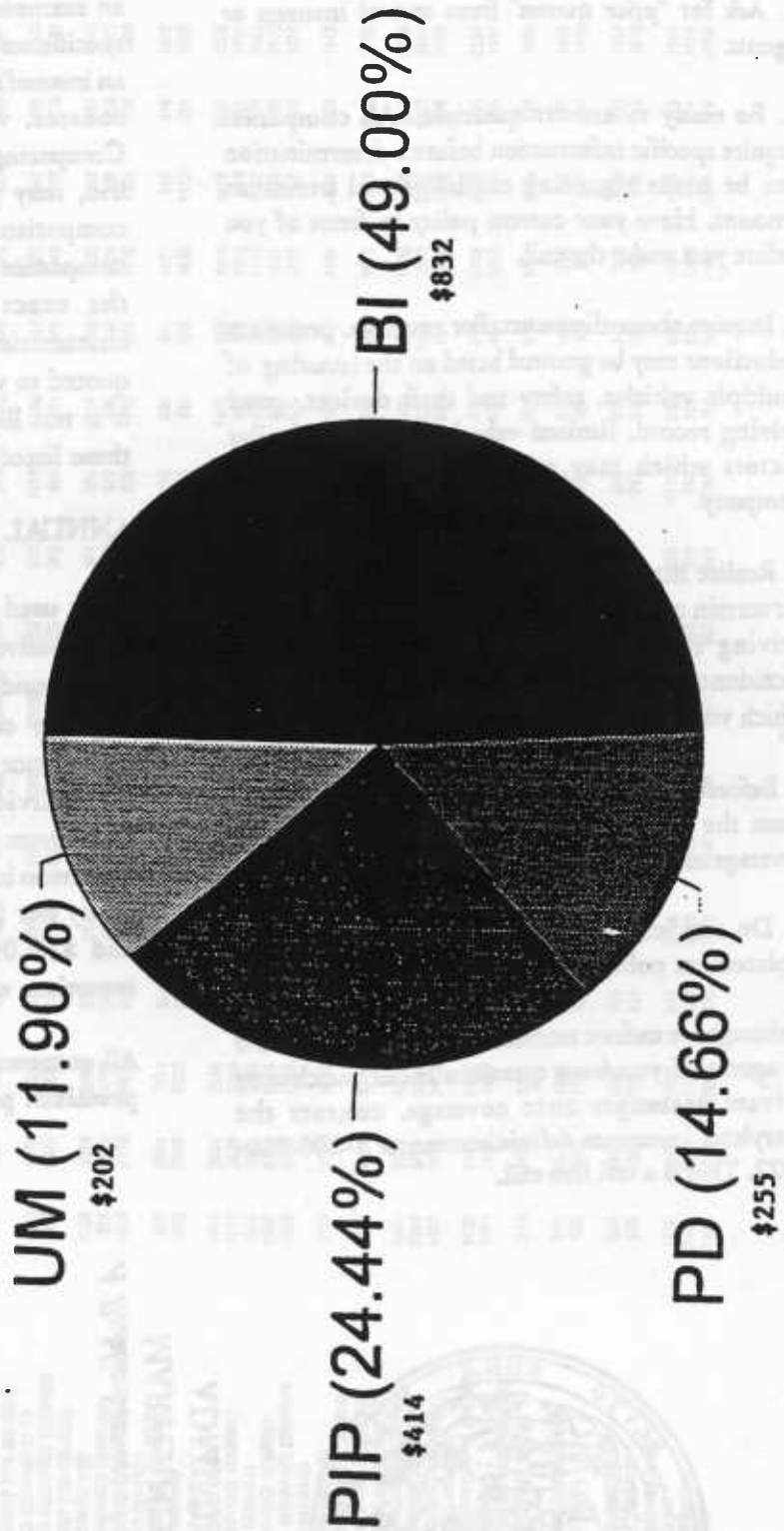
All companies named have installment plans for premium payment.

A Public Service of the
MARYLAND INSURANCE
ADMINISTRATION

A COMPARISON GUIDE
FOR MARYLAND
JULY 1995

INSURANCE
RATES

LIABILITY PREMIUM PROPORTIONS BALTIMORE CITY \$1,698 - @100% ADEQUACY



MAIF PIP

| Territories | % Full PIP Policies | % Limited PIP Policies | Full PIP Rate | Limited PIP Rate |
|--------------------------------|---------------------|------------------------|---------------|------------------|
| 01 Baltimore City | 40.3% | 59.7% | 415 | 190 |
| 02 Baltimore Inner | 45.5% | 54.5% | 315 | 145 |
| 08 Montgomery County Outer | 86.4% | 13.6% | 105 | 50 |
| 09 Prince Georges County Outer | 82.5% | 17.5% | 128 | 60 |
| 10 Baltimore Outer | 51.4% | 48.6% | 277 | 127 |
| 11 Montgomery County Inner | 85.7% | 14.3% | 133 | 63 |
| 12 Prince Georges County Inner | 78.2% | 21.8% | 149 | 70 |
| 13 Lower Eastern Shore | 89.8% | 10.2% | 118 | 56 |
| 14 Remainder | 85.6% | 14.4% | 136 | 64 |
| Statewide | 74.4% | 25.6% | | |

The rates shown are for non-discounted premiums. For the three-year clean driver, who has been the subject of discussion by the Commission, the PIP rates would be approximately 70% of those shown on the chart.

Maryland Territories

| Territory | Earned Car Years | Claim Frequency | Claim Severity | Average Loss Cost | Claim Frequency | Claim Severity | Average Loss Cost | Number BI Claim Per 100 PD Claim |
|-----------|---------------------|--------------------|-------------------|-------------------------|--------------------|-------------------|-------------------------|---|
| BI | | | | PD | | | | |
| 01 | 319,100 | 3.63 | \$8,422 | \$305.67 | 5.84 | \$1,448 | \$84.56 | 62 |
| 02 | 820,163 | 2.20 | \$8,585 | \$188.74 | 4.78 | \$1,462 | \$69.84 | 46 |
| 08 | 253,230 | 1.59 | \$9,189 | \$146.14 | 5.29 | \$1,400 | \$74.01 | 30 |
| 09 | 365,444 | 1.66 | \$9,544 | \$158.86 | 4.60 | \$1,549 | \$71.26 | 36 |
| 10 | 524,555 | 1.89 | \$9,520 | \$179.49 | 4.66 | \$1,523 | \$70.99 | 40 |
| 11 | 560,603 | 1.44 | \$8,586 | \$123.55 | 5.19 | \$1,358 | \$70.52 | 27 |
| 12 | 418,023 | 2.08 | \$8,988 | \$187.35 | 5.09 | \$1,519 | \$77.31 | 40 |
| 13 | 350,531 | 1.12 | \$9,364 | \$104.53 | 3.59 | \$1,513 | \$54.31 | 31 |
| 14 | 1,938,990 | 1.42 | \$9,013 | \$127.76 | 4.03 | \$1,483 | \$59.73 | 35 |
| State | 5,550,639 | 1.76 | \$8,932 | \$157.37 | 4.57 | \$1,471 | \$67.20 | 38 |
| PIP | | | | | | | | |
| 01 | 321,103 | 5.10 | \$2,447 | \$124.73 | | | | |
| 02 | 837,484 | 2.74 | \$2,219 | \$60.84 | | | | |
| 08 | 260,857 | 1.89 | \$1,990 | \$37.67 | | | | |
| 09 | 370,089 | 2.14 | \$2,407 | \$51.57 | | | | |
| 10 | 531,577 | 2.61 | \$2,303 | \$60.04 | | | | |
| 11 | 584,049 | 1.60 | \$2,366 | \$37.82 | | | | |
| 12 | 427,287 | 2.89 | \$2,456 | \$71.03 | | | | |
| 13 | 359,619 | 1.64 | \$1,904 | \$31.23 | | | | |
| 14 | 1,992,632 | 1.85 | \$1,910 | \$35.26 | | | | |
| State | 5,684,697 | 2.29 | \$2,191 | \$50.27 | | | | |

Definition of Territories:

- | | |
|---|---|
| 01 Baltimore City County | 11 Montgomery County Suburban |
| 02 Baltimore Suburban | 12 Prince Georges County Suburban |
| 08 Montgomery County Outer Suburban | 13 Caroline, Dorchester, Kent, Queen Annes, Somerset, Talbot, etc., Counties |
| 09 Prince Georges County Outer Suburban | 14 Remainder of State |
| 10 Baltimore Outer Suburban | |

Notes: (1) Claim frequency is the number of claims per 100 insured cars.

(2) Claim severity is the average loss paid per claim.

(3) Average loss cost is the average amount of loss per year per insured car, including cars not involved in accidents.

(4) Data are for 1989-1991 combined.

Source: NAII Automobile Compilation (1993).

SOURCE: "Trends in Auto Accident Claims" 2nd Ed. Part One (1995)

Figure 3-3
Number of BI Claims per 100 PD Claims for Selected Territories

| | BI claims per 100 PD claims | BI claims per 100 PD claims |
|-----------------------------|--------------------------------|--------------------------------|
| California | 45.2 | New York |
| Los Angeles Metropolitan | 98.8 | New York City* |
| Oakland Metropolitan | 45.6 | Buffalo |
| San Francisco County | 39.9 | Rochester |
| San Diego Metropolitan | 39.8 | |
| Florida | 18.7 | Ohio |
| Miami | 29.4 | Cleveland |
| Jacksonville | 18.3 | Cincinnati |
| Hillsborough County (Tampa) | 18.6 | Columbus |
| Orange County (Orlando) | 15.5 | |
| Pennsylvania | 23.3 | |
| Philadelphia | 78.5 | |
| Pittsburgh | 18.0 | |

*Includes Bronx, Kings, Manhattan, Richmond and Queens Counties, as well as Long Island City and the Borough of Manhattan excluding Governors Island.

**Includes Westerville and Franklin County.

Note: Data are for 1989-1991 combined.

Source: NAII Automobile Compilation (1993).

Figure 6-9
Economic Losses and Payments for BI Claimants Whose Most Serious Injury is a Back Sprain or Strain by Lost Work Time and Attorney Involvement

| Work Time Lost | Number of BI Claimants | Average Economic Loss | Average BI Payment | Payment Per Dollar of Economic Loss Gross | Net* |
|-------------------------------------|------------------------|-----------------------|--------------------|---|--------|
| Employed, No Lost Work Time | | | | | |
| Attorney | 928 | \$3,447 | \$8,026 | \$2.33 | \$1.56 |
| No Attorney | 661 | 1,071 | 2,375 | 2.22 | 2.22 |
| Employed With Lost Work Time | | | | | |
| Attorney | 1,848 | 7,791 | 12,586 | 1.62 | 1.08 |
| No Attorney | 1,003 | 2,228 | 3,983 | 1.79 | 1.79 |
| Total | | | | | |
| Attorney | 2,874 | 6,271 | 11,005 | 1.76 | 1.18 |
| No Attorney | 1,707 | 1,768 | 3,364 | 1.90 | 1.90 |

Note: Limited to employed BI claimants for whom a back sprain or strain was their most serious injury. Excludes permanent total disability and fatality claimants. Excludes claimants with zero or missing economic loss. Total includes claimants for whom time lost from work and attorney representation were unknown.

*Net payment per dollar of economic loss represents payment after deducting economic loss. For represented claimants, the net payment reflects a 33% reduction to the gross payment for legal expenses.

SOURCE: "Auto Injuries: Claiming Behavior and its Impact on Insurance Costs" IRC (1994)

Figure 6-11
Employed BI Claimants With No Lost Time From Work
by Extent of Hospitalization Where a Back Sprain or Strain
is the Most Serious Injury

| Hospital Treatment | Attorney | | No Attorney | | Total | |
|---------------------|------------|-------------|-------------|-------------|--------------|-------------|
| | Number | Percent | Number | Percent | Number | Percent |
| No Hospital Visit | 629 | 66% | 535 | 67% | 1,164 | 67% |
| Emergency Room Only | 314 | 33 | 263 | 33 | 577 | 33 |
| Hospital Stay | 10 | 1 | 1 | * | 11 | 1 |
| Total | 953 | 100% | 799 | 100% | 1,752 | 100% |

*Percentage lower than 0.5%.

Note: Limited to employed BI claimants for whom a back sprain or strain was their most serious injury. Excludes permanent total disability and fatality claimants.

SOURCE: "Auto Injuries: Claiming Behavior and its Impact on Insurance Costs" IRC (1994)

Figure 6-12
Employed BI Claimants With No Lost Time From Work by Types of Professionals
Used When a Back Sprain is the Most Serious Injury

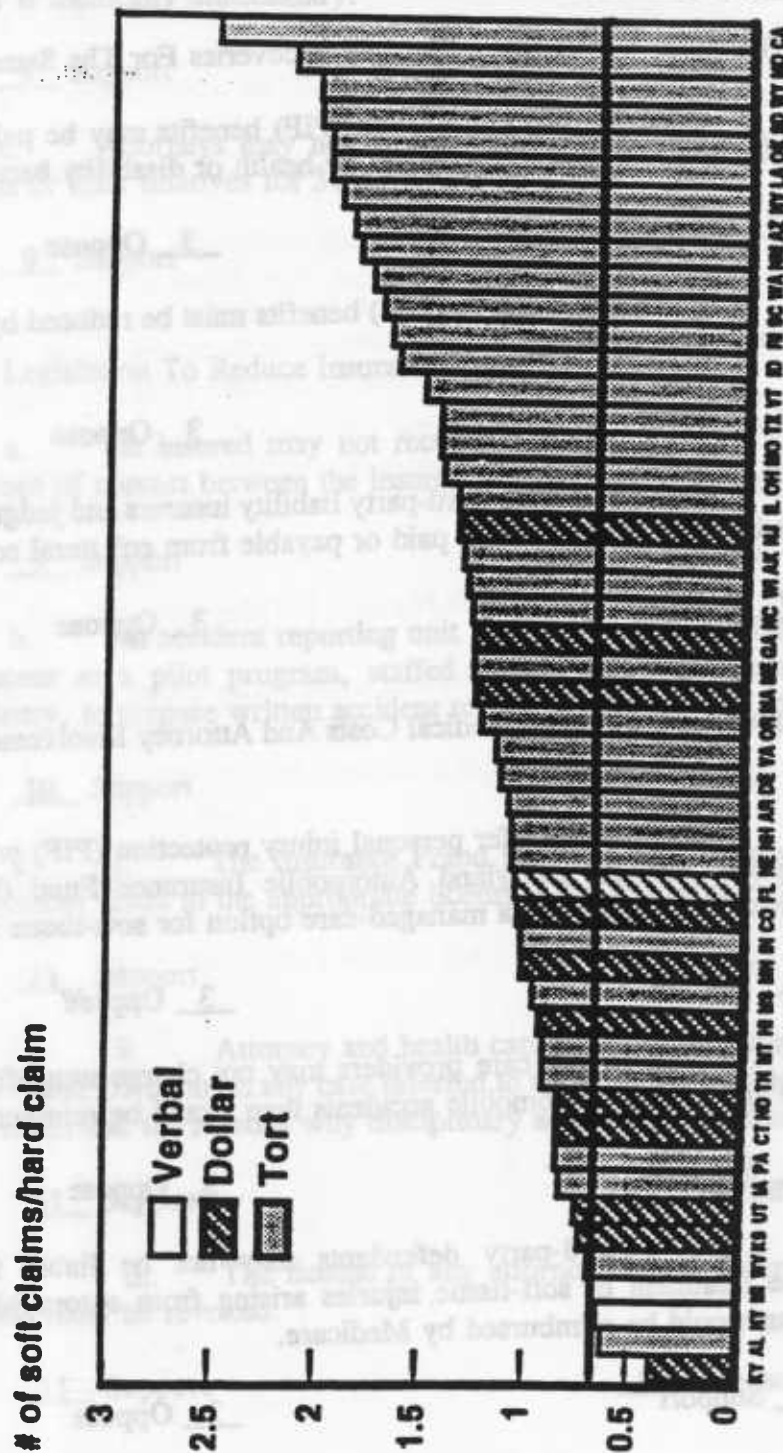
| Types of Professionals | Attorney | | No Attorney | | Total | |
|---------------------------------|------------|-------------|-------------|-------------|--------------|-------------|
| | Number | Percent | Number | Percent | Number | Percent |
| MD in Emergency Room | 321 | 34% | 264 | 37% | 585 | 35% |
| MD in Other Location | 550 | 58 | 277 | 39 | 827 | 50 |
| Osteopath in Emergency Room | 10 | 1 | 7 | 1 | 17 | 1 |
| Osteopath in Other Location | 55 | 6 | 27 | 4 | 82 | 5 |
| Chiropractor | 430 | 45 | 246 | 35 | 676 | 41 |
| Physical Therapist | 256 | 27 | 68 | 10 | 324 | 20 |
| Psychotherapist | 30 | 3 | 2 | * | 32 | 2 |
| Dentist | 18 | 2 | 6 | 1 | 24 | 1 |
| Other | 175 | 18 | 85 | 12 | 260 | 16 |
| Total Claimants Treated* | 951 | 100% | 707 | 100% | 1,658 | 100% |
| Average Number of Professionals | 1.95 | | 1.46 | | 1.74 | |
| Used Per Claimant Treated | 4 | | 76 | | 80 | |

*Percentages add to more than 100% because many claimants used more than one type of medical professional. Total does not include claimants with missing attorney involvement information.

Note: Limited to employed BI claimants for whom a back sprain or strain was their most serious injury. Excludes permanent total disability and fatality claimants.

SOURCE: "The Costs of Excess Medical Claims for Automobile Personal Injuries" ICJ (1995)

Pattern Consistent with Many Claims for Nonexistent Injuries



RECOMMENDATIONS IN THE FINAL REPORT

1. Legislation To Eliminate Multiple Recoveries For The Same Injury
 - a. Personal injury protection (PIP) benefits may be paid only to reimburse the insured for expenses not otherwise covered by health or disability benefits.
7 Support 3 Oppose
 - b. Uninsured motorist (UM) benefits must be reduced by compensation paid or payable from collateral sources.
7 Support 3 Oppose
 - c. Recoveries from third-party liability insurers and judgments on third-party claims must be reduced by compensation paid or payable from collateral sources.
7 Support 3 Oppose
2. Legislation To Reduce Medical Costs And Attorney Involvement In Bodily Injury Claims
 - a. Insurers may offer personal injury protection (PIP) with a managed-care option; major insurers and the Maryland Automobile Insurance Fund (MAIF) must offer personal injury protection (PIP) with a managed-care option for soft-tissue injuries.
8 Support 3 Oppose
 - b. i. Health care providers may not charge more for the treatment of soft-tissue injuries arising from automobile accidents than would be reimbursed by Medicare.
8 Support 3 Oppose
 - ii. Third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents in an amount greater than would be reimbursed by Medicare.
8 Support 3 Oppose

iii. Third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents if a peer review organization determines that the treatment fails to conform to professional standards of performance or is medically unnecessary.

9 Support

2 Oppose

c. Attorneys may not send targeted direct-mail solicitations to automobile accident victims or their relatives for 30 days following an accident.

9 Support

0 Oppose

3. Legislation To Reduce Insurance Fraud

a. An insured may not recover uninsured motorist (UM) benefits without physical evidence of contact between the insured's vehicle and the hit-and-run vehicle.

9 Support

2 Oppose

b. An accident reporting unit shall be established within the Baltimore City police department as a pilot program, staffed by non-police personnel and funded by the insurance industry, to prepare written accident reports at the accident scene.

10 Support

1 Oppose

c. i. The Insurance Fraud Division must refer evidence of attorney or health care provider fraud to the appropriate licensing and disciplinary boards.

11 Support

0 Oppose

ii. Attorney and health care provider licensing boards must report to the Insurance Fraud Division on any case referred to them by the Division in which disciplinary action is not taken and the reasons why disciplinary action was not taken.

11 Support

0 Oppose

iii. The license of any attorney or health care provider convicted of insurance fraud must be revoked.

11 Support

0 Oppose

EXHIBIT 11

d. A person may not pay or receive compensation for directing or referring an automobile accident victim to an attorney or health care provider.

11 Support

0 Oppose

e. i. Before a claim has been made, an insurer may cancel and rescind an insurance policy immediately and without prior notice if the insured makes misrepresentations in the application for automobile insurance and the insurer would not have issued the policy if the true facts had been made known to the insurer as required by the application.

10 Support

1 Oppose

ii. After a claim has been made, an insurer may deny first-party benefits to an insured who makes misrepresentations in the application for automobile insurance if the insurer would not have issued the policy if the true facts had been made known to the insurer as required by the application.

10 Support

1 Oppose

4. Legislation To Reduce The Number Of Mandatory Coverages

a. Insurers must make personal injury protection (PIP) available to all insureds; an insured does not have to purchase personal injury protection (PIP).

9 Support

2 Oppose

b. i. Insurers must make uninsured motorist (UM) coverage available to all insureds; an insured does not have to purchase uninsured motorist (UM) coverage.

8 Support

3 Oppose

ii. An insured who does not purchase uninsured motorist (UM) coverage may not claim against the Unsatisfied Claim and Judgment Fund.

10 Support

1 Oppose

5. Regulation Of Territorial Rating Practices

a. The Maryland Insurance Administration (MIA) should adopt regulations to define the "underlying risk considerations" that automobile insurers may use in establishing or applying rating territories.

9 Support

1 Oppose

b. The Maryland Insurance Administration (MIA) should

i. investigate the relationship between the racial composition of rating territories used by insurance companies and automobile insurance rates; and

9 Support

1 Oppose

ii. if appropriate, adopt regulations to ameliorate the impact of territorial rating practices on African-Americans in Baltimore City and elsewhere without arbitrarily shifting automobile insurance costs from one territory to another.

9 Support

1 Oppose

6. Legislation To Reduce Accident Costs

a. Cameras may be installed at high-risk intersections to photograph red-light violations.

10 Support

0 Oppose

b. Police may stop a vehicle for a seat-belt or child-restraint violation.

10 Support

1 Oppose

c. No person may use or operate a radar detector.

10 Support

0 Oppose

December 4, 1995

Governor's Commission on Baltimore City Automobile Insurance Rate Reduction

Analysis of Proposed Statutory Reforms

December 1995

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Tillinghast

A Towers Perrin Company

December 12, 1995

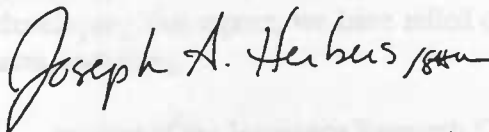
Mr. David M. Funk
Chairman
Governor's Commission on Baltimore City
Automobile Insurance Rate Reduction
c/o Shapiro and Olander
36 South Charles Street, 20th Floor
Baltimore, Maryland 21201-3147

Dear Mr. Funk:

Enclosed is an unbound copy of our final report documenting our estimates of the cost impact of statutory reforms to the private passenger auto liability system in the state of Maryland, as outlined in the Preliminary Report of the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction, dated September 1, 1995.

It was a pleasure working with you and other Commission members in completing this assignment.

Sincerely,



Joseph A. Herbers, ACAS, MAAA
Miller, Rapp, Herbers, Brubaker, & Terry, Inc.



Ollie L. Sherman, Jr., FCAS, MAAA
Tillinghast, a Towers Perrin company

Encl.

MDAUTO.WPD

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EXHIBITS

EXECUTIVE SUMMARY

Purpose

Miller, Rapp, Herbers, Brubaker, & Terry, Inc. (MRHBT) and Tillinghast, a Towers Perrin company (Tillinghast) were requested by the Maryland Insurance Administration and the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction (Commission) to perform a study of proposed statutory reforms to the private passenger auto liability system in the state of Maryland. This report presents a summary of our findings.

Distribution and Use

This report has been prepared solely for the use of the Commission and the Maryland Insurance Administration. We understand that the Commission may wish to provide copies of this report to interested third parties. We request that any distribution of this report meet the following conditions:

- the entire report (including all exhibits and appendices) be distributed rather than merely excerpts; and
- all recipients of the report be made aware that MRHBT and Tillinghast are available to discuss any questions that may arise regarding the report.

Reliances and Limitations

In developing this report, we have relied on publicly available information from a variety of sources, including:

- reports of the Insurance Research Council;
- Statistical Abstract of the United States;
- reports of the Insurance Services Office (ISO) and the National Association of Independent Insurers (NAII);
- articles from A. M. Best Company (Best's);
- rating information for major auto insurance carriers in the states of Maryland, Michigan, New York, New Jersey, and Colorado.

We have relied on the general accuracy of this data without independent verification. In certain instances where specific data were not readily available, judgments have been used in order to estimate the effects on the private passenger automobile liability insurance system.

The issues addressed in his report relate strictly to auto liability insurance. A number of these same issues may have a bearing on the costs for auto physical damage as well, however, an analysis of the impact on physical damage costs is beyond the scope of this project.

Our conclusions are based on the private passenger auto liability system as a whole in the state of Maryland. These same conclusions may not necessarily apply to individual companies due to differences in the management outlook, distribution methods, and mix of business. Moreover, the estimated impact of these reforms may not apply to specific individual insureds due to geographic location, limits of liability and first party coverage purchased, driver characteristics, and so forth.

An important consideration in estimation of the true cost impact of various reform initiatives is the impact not only on economic losses (i.e., medical and wage loss) but also noneconomic losses (or general damages) such as pain and suffering, loss of consortium, and so forth. The so-called "multiplier" effect assumes that cost savings in the economic component of losses will be accompanied by savings in the general damages component in the same ratio as the current system provides. Thus, a 10% savings in the economic component will result in a 10% savings in the general damage component. The multiplier effect is really only valid if there are restrictions in the law that preclude attorneys from pleading, proving or entering into evidence any dollar amounts of economic losses paid from collateral sources. That is, even though statutory reforms result in savings to the economic loss component, no savings will inure to the general damage component unless attorneys are precluded from entering such evidence of losses into the record. We understand that the Commission believes that the proposed reforms can be framed in a manner such that reductions in the economic components will result in proportional reductions in the general damages component. Thus, for this analysis, we assume there will be a multiplier effect on general damage losses as a result of the statutory reforms. *To the extent that the reforms do not reduce general damages in proportion to economic damages, the actual savings may be substantially less than estimated herein.*

There are many recommendations included in the Preliminary Report, however those not specifically outlined later in the *Specific Reform Provisions* of this report are outside the scope of this study.

It is likely that these statutory reforms will involve changes in claiming behavior on the part of injured drivers, vehicle occupants, and others involved in automobile accidents. Due to the inherent uncertainty involved in predicting future claiming behavior, we incorporate elements of conservatism in the process of estimating the impact of these statutory reforms.

Specific Reform Provisions

We have reviewed the detailed recommendations of the Commission relative to reforms of Maryland's statutes regarding private passenger automobile insurance. The following describes our understanding of each reform:

1. Legislation to Eliminate Multiple Recoveries for the Same Injury:

- a) *Personal Injury Protection (PIP) benefits may be paid only to reimburse the insured for expenses not otherwise covered by health or disability benefits.* To the extent that PIP is not duplicating the recoveries from private and public carriers, the secondary nature of the PIP coverage would shift losses from the private passenger auto system to private and public carriers.
- b) *Uninsured motorist benefits must be reduced by compensation paid or payable from collateral sources.* Current law permits recovery of damages under the uninsured motorist (UM) coverage from other collateral sources, thereby duplicating benefits. This provision would eliminate such duplication
- c) *Recoveries from third party liability insurers and judgments on third-party claims must be reduced by compensation paid or payable from collateral sources.* Current law permits recovery of damages under the bodily injury liability (BI) coverage for damages already paid from PIP and other collateral sources. In fact, the statutes expressly prohibit a PIP carrier from pursuing a right of subrogation against the at-fault party to recover the duplicated benefits. This revision would eliminate such duplication received under the BI coverage for damages already compensated under the first party PIP coverage as well as other collateral sources.

2. Legislation to Reduce Medical Costs and Attorney Involvement in Bodily Injury Claims

- a) *Insurers may offer PIP with a managed care option.* The current system for compensating accident victims creates opportunities and incentives for claimants, attorneys and health care providers to over-treat injuries, or treat non-existent injuries, in order to maximize recoveries. One method of reducing the opportunity for over-treatment of injuries is to require that PIP benefits for soft-tissue injuries be delivered in a managed care setting.
- b) *Health care providers may not charge more for the treatment of soft-tissue injuries arising from automobile accidents than would be reimbursed by Medicare.* Furthermore, third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents in an amount greater than would be reimbursed under Medicare, or if a peer review organization determines that the treatment fails to conform to professional standards of performance or is not medically necessary. As reimbursements under the Medicare system are typically less than those otherwise considered reasonable and customary, there is potential for savings.
- c) *Attorneys may not send targeted direct-mail solicitations to automobile accident victims or their relatives for 30 days following an accident.* Similar to the rule in Florida, this provision attempts to mitigate attorney involvement in auto injury claims.

3. Legislation to Reduce Insurance Fraud

- a) *Insureds may not recover uninsured motorist benefits without physical evidence of contact between the insured's vehicle and the hit-and-run vehicle.* Insureds who accidentally cause damage to their own vehicle may claim the damage was caused by a hit-and-run or "phantom" vehicle, and collect under their UM coverage. The so-called "contact rule" helps to reduce unnecessary and fraudulent UM claim payments.
- b) *An accident reporting unit shall be established within the Baltimore City police department as a pilot program.* The lack of a police report from an accident scene creates the opportunity for insurance fraud. A pilot program limited initially to the city of Baltimore will be a first step in assessing the perceived benefits.
- c) *Reporting of evidence of attorney or health care provider fraud to appropriate licensing boards and to the Insurance Fraud Division, and the mandatory revocation of the license of any attorney or health care provider convicted of insurance fraud.* Currently, evidence of fraud on the part of these professionals is not always referred to the appropriate licensing board for disciplinary action and disciplinary action is not always taken.
- d) *A person may not pay or receive compensation for directing or referring an automobile accident victim to an attorney or health care provider.* This is a restriction on the use of paid "runners" to direct accident victims to particular attorneys or clinics.
- e) *Before a claim has been made, an insurer may cancel and rescind a policy of an insured who makes a material misrepresentation in the application for automobile insurance if the insurer would not have issued the policy if the true facts had been made known to the insurer as required by the application; after a claim has been made, an insurer may deny first party benefits to the insured.* If a person procures insurance fraudulently, the cost of that fraud is borne by the drivers who procure their insurance honestly. This provision would limit this cost-shift by permitting insurers to immediately cancel and rescind the policy if the fraud is discovered before a claim is made and to deny first-party benefits to the insured if the fraud is discovered after a claim is made.

4. Legislation to Reduce the Number of Mandatory Coverages

The PIP and UM coverages must be made available, however, they will be optional. Insureds choosing not to purchase UM coverage may not claim against the Unsatisfied Claim and Judgment Fund. There will be cost savings to individual consumers that do not purchase the heretofore mandatory coverages.

5. Legislation to Reduce Accident Costs

- a) *Cameras may be installed at high-risk intersections to photograph red-light violations.*
- b) *Police may stop a vehicle for a seat-belt or child restraint violation.*
- c) *No person may use or operate a radar detector.*

All three provisions may have some impact on insurance costs, especially in changing certain driving behavior.

Findings

The projected ultimate cost of claims and allocated loss adjustment expenses for the mandatory private passenger auto liability insurance coverages is approximately \$830 million for accidents occurring in the state of Maryland in 1996. Several of the proposed statutory reforms will have a significant impact on losses. We estimate the total impact of the reforms to be -27.3%:

| <u>Reform Provision</u> | <u>Impact on Mandatory Coverage Losses</u> | | | | |
|------------------------------------|--|-----------|------------|-----------|--------------|
| | <u>BI</u> | <u>PD</u> | <u>PIP</u> | <u>UM</u> | <u>Total</u> |
| Secondary PIP | -1.0% | 0% | -26.4% | -1.0% | -4.8% |
| Duplicate Recoveries | -27.0 | 0 | 0.0 | -21.3 | -14.8 |
| Managed Care | 0.0 | 0 | -9.5 | 0.0 | -1.5 |
| Treatment of Soft | | | | | |
| Tissue Injuries | -14.0 | 0 | -7.9 | -10.3 | -8.9 |
| Restriction of Atty. Solicitations | -1.0 | 0 | 0.0 | -1.0 | -0.6 |
| Restrictions on UM Benefits | 0.0 | 0 | 0.0 | -0.5 | -0.02 |
| Other | 0.0 | 0 | 0.0 | 0.0 | 0.0 |
| Aggregate Impact | -37.5 | 0 | -38.6 | -30.8 | -27.3% |

The expected impact on mandatory coverage costs in the city of Baltimore is the same for each line of coverage; however, the average savings across the package of mandatory coverages is somewhat higher at -30.7%, because BI and PIP coverages comprise a larger percentage of overall costs in Baltimore compared with the rest of the state. The dollar impact of the proposed reforms on insurer losses is estimated as \$227 million statewide.

The estimated cost savings must be translated into an estimated premium savings. The expected percentage savings to premiums is somewhat less than the percentage impact on losses due to insurer's fixed expenses. We estimate the impact on premiums statewide will be -21.5% and -24.2% in the city of Baltimore. The dollar impact of the proposed reforms on premiums is estimated at \$249 million.

The indicated savings are highly leveraged by the assumption regarding the multiplier effect. The assumption regarding its validity has been incorporated into our analysis at the request of the Commission. In fact, 11.6% of the indicated 27.3% cost savings is directly attributable to the multiplier effect. That is, without the multiplier effect, the estimated cost impact is -15.7% instead of -27.3%. Therefore, should this assumption not prove to be valid upon drafting of the actual statute implementing these recommendations, the indicated savings outlined above would need to be adjusted downward accordingly.

As previously indicated, there are several instances in which key assumptions are based on limited information and informed judgment. Thus, the estimates of potential savings are subject to variation. The discussion above indicates the substantial effect of the assumption regarding the validity of the multiplier effect. The assumption regarding the duplication of benefits is another key component of the potential savings analysis. Our analysis examines the impact of the elimination of costs where other coverage is available regardless of whether actual duplicate recovery is made. We are unable to separate the amount of actual duplicate recovery from the amount potentially duplicated. We did, however, test the sensitivity of the savings estimates to variations in the assumed percentage duplication. The table below displays the indicated savings under the assumption that 50% of the costs recoverable from other sources are duplicate recoveries.

| | <u>Loss Cost Savings</u> | <u>Premium Savings</u> |
|-----------|--------------------------|------------------------|
| Statewide | 19.2% | 15.1% |
| Baltimore | 21.5 | 17.0 |

If we assumed that the multiplier effect is not applicable and 50% of the costs recoverable from other sources are duplicate recoveries, the indicated savings are as follows:

| | <u>Loss Cost Savings</u> | <u>Premium Savings</u> |
|-----------|--------------------------|------------------------|
| Statewide | 10.1% | 8.6% |
| Baltimore | 13.2 | 10.4 |

Obviously, making the first party PIP and UM coverages optional will eliminate the cost of these coverages for insureds who elect not to purchase them. Declining PIP and UM coverages will reduce the costs by approximately 21% (16% from PIP and 5.3% from UM) for the average amount of heretofore mandated coverage. However, to the extent that losses paid under PIP coverage are not being duplicated by other collateral sources, there will be an increase in costs to the current system's BI coverage costs. If PIP costs are reduced by 25% as a result of Maryland insureds choosing to drop PIP coverage, economic losses not paid or payable from collateral sources will be shifted to BI, effectively increasing current BI costs by more than 19% if costs are duplicated. Likewise, if PIP costs are reduced by 50% because insureds in Maryland forego purchasing first party PIP coverage, the upward pressure on BI costs could be more than 38%. It should be noted that the above calculations of the cost shift to BI assumes that there is currently no duplication between PIP and BI or other collateral sources. To the extent that duplication exists, the cost shift will be lower.

ANALYSIS

Background

On February 20, 1995, Governor Parris N. Glendening signed an Executive Order establishing the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction. The Commission was established to examine those factors which contribute to high automobile insurance rates in Baltimore City and to make recommendations to the Governor that will reduce these rates. The formation was a part of major automobile insurance reform initiative to address the dual problems of availability and affordability of automobile insurance in the city of Baltimore. Certain reforms have already been passed by the General Assembly. The recommendations of the Commission are those outlined previously in the *Specific Reform Provisions* section of this report.

Methodology

The methodology we have employed in deriving estimates of the cost impact of the proposed statutory reforms was to examine publicly available data from a variety of sources:

- current costs of auto liability insurance in the state of Maryland;
- reimbursement levels as a percentage of reasonable and customary charges under the Medicare system, from the Health Care Financing Administration (HCFA);
- recent research on auto liability claim files as conducted by the Insurance Research Council (IRC) documented in *Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs*, September 1994 (hereinafter referred to as "closed claim study"); and,
- the impact of similar reforms in other jurisdictions.

Current cost data for auto liability insurance coverages were constructed using the ISO/NAII Fast Track reports. Auto liability insurance data from the Commonwealth of Pennsylvania and data from the HCFA were useful in projecting the impact of imposing the Medicare fee schedule on the compensation for soft-tissue injuries. The descriptive information embodied in the IRC closed claim study provided valuable data for quantifying the potential for duplication of recoveries in the current system. Data from the state of Colorado (where managed care was implemented in 1991) was useful in projecting the impact of managed care on the compensation of automobile injury claims. Finally, the discounts offered by private passenger automobile insurers in other jurisdictions for similar coverage options provided a valuable tool for comparison with results indicated from other sources.

Discussion

For each of the specific reform provisions, we will discuss the data sources used in our analysis, the indicated cost impact of each reform and our judgment as to the true impact of the reform in light of our experience with similar provisions in other jurisdictions.

We rely extensively on the IRC closed claim study. The study includes information regarding the availability of collateral sources for compensating injuries, including other automobile coverages. The study is countrywide in scope, however, it includes data on 980 BI, 111 UM, 11 underinsured motorist (UIM), 694 PIP, and 92 medical payments claims from the state of Maryland.

1. Projected Mandatory Coverage Costs (Exhibits III, IV)

Before discussing the impact of reforms, it is necessary to project the costs of the current system. As outlined in the enclosed Exhibit III, we project the cost of mandatory auto liability coverages in the state of Maryland to be approximately \$831 million in 1996, based on an average cost per vehicle of \$332.23 and 2.5 million insured vehicles (note these figures are insurer costs, not premiums):

| <u>Coverage</u> | <u>Claim Frequency</u> | <u>Average Severity</u> | <u>Annual Loss Cost per Car</u> | <u>Projected Insurer 1996 Costs</u> |
|---------------------------|----------------------------|-----------------------------|---|---|
| BI | .01510 | \$ 9,725 | \$ 168.87 | \$ 422.2 million |
| PD | .04700 | 1,875 | 92.53 | 231.3 |
| PIP | .02150 | 2,350 | 53.05 | 126.3 |
| UM-BI | .00150 | 9,725 | 15.32 | 38.3 |
| UM-PD | .00050 | 1,635 | 0.82 | 2.0 |
| UIM-BI | .00008 | 19,500 | 1.64 | 5.1 |
| Total Mandatory Coverages | | | \$ 332.23 | \$ 830.6 million |

The aggregate costs projected for the city of Baltimore are approximately \$89 million, with an average annual cost of \$592 per vehicle (78% higher than the statewide average).

These projected costs are based on our analysis of the trends in past costs (refer to Exhibit IV) and those expected in calendar year 1996 prior to any statutory reforms. This is the basis from which we compute the estimated impact of various reform initiatives.

2. Secondary PIP Coverage (Exhibit V)

Recommendation 1(a) states that Personal Injury Protection (PIP) benefits may be paid only to reimburse the insured for expenses not otherwise covered by health or disability benefits.

To the extent that PIP is not duplicating the recoveries from private and public carriers, the secondary nature of the PIP coverage would shift losses from the private passenger auto system to private and public carriers. The IRC closed claim study asked claim file reviewers to indicate whether collateral sources were available to the claimant for their injury. Since the majority of claim files had an "unknown" response indicated, we assume the true distribution of responses will be roughly the same as the relative distribution between "yes" and "no" responses. In those instances where we judge the volume of Maryland claim file responses to be unreliable, we supplement the data with responses of similar no-fault claimants in six nearby jurisdictions (specifically the District of Columbia, Delaware, New Jersey, New York, Pennsylvania and Virginia).

According to responses of claimants in the closed claim study, we project that 60% of Maryland claimants have access to health insurance, 2.6% have access to workers compensation benefits, 19% have access to a wage continuation plan, 10% have access to Medicare benefits and 16% have access to other PIP benefits (such as essential services, funeral benefit and so forth). It is interesting to note the responses to this question indicate Maryland claimants are much more likely than their counterparts in neighboring jurisdictions (and countrywide for that matter) to have access to recoveries from collateral sources. We suspect this is due in part to the large number of government employees living in Maryland.

The PIP claimants that have access to workers compensation benefits either choose to file a PIP claim rather than a workers compensation claim (for a variety of reasons), or submit a PIP claim to receive benefits already paid by workers compensation. It is prudent to assume that not all dollar amounts paid under the PIP coverage to claimants with access to workers compensation are in fact duplicated.

With respect to Medicare, it is our understanding that Medicare is strictly secondary to automobile insurance benefits. Hence, we do not expect any PIP savings emanating from the Medicare system.

For those claimants with access to health benefits and wage continuation plans, we must recognize that not all dollars associated with automobile injuries can be recovered from an alternate recovery source, due to deductibles, co-payments and waiting periods. While we do not have detailed data to support our assumption, we estimate that 50% of the medical claim dollars paid under the PIP coverage for injuries sustained in an auto accident could be recovered from a health plan via secondary coverage. Moreover, we estimate that 50% of the wage loss and "other" dollars paid out under PIP could be recovered from an alternate recovery source. The combination of the percentage of claim dollars eligible for collateral recovery and the assumed portion of those claim dollars effectively recovered from alternative sources amounts to 28.4% (see Exhibit V).

To assess the reasonableness of the 28.4% cost impact, we examine the premium discounts provided by private passenger auto insurers in the states of Michigan, New Jersey and New York. In each of these three states, insureds are allowed to coordinate their PIP coverage with other medical and/or wage continuation plans. Discounts offered by major carriers (State Farm, Allstate, and ISO companies) for coordinated coverage are summarized below:

| Secondary Coverage | % Discount Offered on Full PIP Coverage | | |
|--------------------|---|----------|------------|
| | Michigan | New York | New Jersey |
| Medical | 25 - 35% | | |
| Wage Loss | 13 - 15 | 10- 15 | 20 - 25% |
| Medical & Wage | 35 - 48 | n/a | n/a |

The indicated discount using our methodology is 33.5% for medical (67.1% of claim dollars have potential for duplicate recovery and 50% assumed duplicated), 11% for wage loss (22% of claim dollars have potential for duplicate recovery and 50% assumed duplicated) and 6% for all other first party benefits. From the table of discounts above, it appears the 50% assumption is reasonable in light of the implied discounts for each coverage component.

Direct comparisons between the first party PIP coverages offered in Maryland and these other jurisdictions must be approached with care. The state of Michigan requires unlimited medical benefits and has a very generous wage loss benefit (of more than \$60,000 annually) in its first party PIP coverage. The state of New York requires a \$50,000 minimum limit for first party PIP, subject to deductibles and coordination options. Due to the minimum \$2,500 PIP limits required in the state of Maryland, and the fact that insureds may waive coverage for themselves and certain vehicle occupants, comparisons of the impact of secondary between Maryland and other states is not necessarily a straightforward exercise.

There will be a secondary benefit to the cost of providing the bodily injury liability and uninsured motorist coverages as a result of the secondary PIP coverage. As otherwise first party costs are recovered from collateral sources, remaining economic losses would be reimbursed by the secondary PIP coverage. Any remaining uncompensated economic losses (UEL) would then be recovered under the tortfeasor's BI (or insured's UM) coverage. The savings to the current BI and UM coverages would result from PIP covering the UEL currently being reimbursed under the BI and UM coverages. This offset is difficult to measure given the dynamics of recoveries among collateral sources, PIP, BI and UM coverages. However, it is prudent to project somewhat less savings than heretofore indicated on the PIP coverage and corresponding savings to the BI and UM coverage costs. We therefore assume 2% less savings on the PIP coverage (i.e., 26.4% instead of 28.4%) and a 1% savings for the BI and UM coverage costs.

3. Restrictions on Duplicate Recoveries (Exhibit VI)

Recommendation I(b) states that uninsured motorist benefits must be reduced by compensation paid or payable from collateral sources.

Current law permits recovery of damages under the UM coverage (which includes underinsured motorist - UIM - coverage) from other collateral sources, thereby duplicating benefits. This provision would eliminate such duplication under either the first party PIP coverage or from other collateral sources such as health insurance, wage continuation plans, and workers compensation, and thus, reduce UM costs.

Similar to the question regarding PIP claimants, the IRC closed claim study asked claim file reviewers to examine whether collateral recovery sources were available to UM and UIM claimants. Furthermore, it asked whether claimants had received payments from other insurance coverages.

According to the closed claim survey, 90 of 134 (67%) UM/UIM claimants indicated that they had received payments under a first party PIP or Medical Payments coverage. The dollar amounts paid by the first party coverage amounted to \$195,362, which compares with the amounts actually paid under the UM coverage of \$598,317. Hence, it appears the maximum potential savings that could result from precluding the duplicate recovery under UM coverage of benefits paid under a first party coverage would be 32.7% (\$195,362/\$598,317).

As a practical matter, we must recognize that there are many instances in which the amounts paid under PIP coverage are limited by policy limits and would be rightfully claimed in an accident involving an uninsured motorist. We reasonably expect the cost impact of eliminating the duplication of first party PIP recoveries under the UM coverage will be less than half the maximum potential savings indicated.

Access to collateral recovery sources outside the private passenger automobile insurance system could provide additional savings. However, the otherwise indicated savings will be diluted by the percentage of accidents involving uninsured motorists out-of-state. The percentage of claim dollars attributable to Maryland drivers having accidents involving uninsured motorists outside the state borders is considerable. From the IRC closed claim study, approximately 33% of UM claim dollars paid to Maryland residents relate to automobile accidents occurring outside the state. In such cases, the laws of the jurisdiction in which the accident occurred governs the compensation for those injuries. So no matter what statutory reforms are enacted in Maryland, more than 33% of the UM claim dollars will be unaffected.

While some claimants with access to workers compensation benefits may be duplicating their recoveries under the UM coverage, there are situations where a UM claimant may be pursuing recovery of general damages only. Hence, in addition to those claimants that choose not to file a workers compensation claim, there is another class of claimants that are legitimately pursuing recovery under UM, despite having access to benefits under workers compensation. Similar to the discussion for secondary PIP coverage, we do not expect any UM claimants with access to Medicare are currently duplicating recoveries.

For those claimants with access to health benefits and wage continuation plans, we assume 50% of the medical claim dollars paid under the UM coverage could be duplicated via collateral recovery sources. We also estimate that 50% of the wage loss and "other" dollars paid out under UM could be recovered from an alternate recovery source. The combination of the percentage

of claim dollars in-state, the percentage of claim dollars eligible for collateral recovery, and the assumed portion of those claim dollars effectively recovered from alternative sources results in the indicated savings of 21.3% (see Exhibit VI). Included in this estimate is the assumption that the multiplier effect will lower the general damage component of UM costs by the same percentage as that for the economic loss components. To derive that number, we assume the proportion dollars paid out in general damages is the weighted average of economic losses affected (i.e., medical, wage, and all other), or 63.4%. Given that general damages are just over half the total dollars paid out under the UM coverage, the 10.5% savings emanating from reduction in economic losses is matched by a 10.8% savings due to reduction of general damages via the multiplier effect.

Two important issues must be considered when assessing the reasonableness of the 21.3% estimated cost savings. First, UM claimants with access to collateral source recoveries will also likely be PIP claimants with access to collateral source recoveries. There may be several instances where double recovery of benefits is occurring between a health plan and PIP, or between UM and a health plan, but not between PIP and UM. Hence, there may be savings indicated between UM and collateral sources but not between UM and PIP. Therefore, we must be careful not to double count the potential savings to UM claimants for dollars of economic loss heretofore paid under one or another collateral source (but not both). Given the uncertainties involved in estimating the dollars currently duplicated between PIP and UM, and in estimating the number of instances where there is double recovery of benefits, we effectively exclude the possible duplication between PIP and UM and measure instead the potential for duplication between UM and other collateral sources.

A second issue one must consider in assessing the reasonableness of the 21.3% estimated costs savings is the proportion of dollars assumed duplicated. Recall that we use a 50% assumption, which is the same as that assumed duplicated between the PIP coverage and collateral sources. One could argue the percentage should be greater in a UM claim situation precisely because there is one other possible collateral source available - the first party PIP coverage. We recognize that all else being equal, we should incorporate a somewhat more liberal assumption regarding percentage of claim dollars duplicated. However, the administration of claims in this secondary coverage environment will be difficult. In addition to dealing with its own claimants in a UM claim situation, an insurer would have to force its insured to file claims against collateral sources in order to assess the UM coverage. In all likelihood, there will be considerable resistance on the part of insureds to identify, much less file claims against, collateral sources. Some may fear repercussions on their employment status for filing a workers' compensation claim. Others may not want to participate in the cost of their injuries via deductibles and copayments. Furthermore, many claimants may be wary of filing claims against their health insurer that will erode their lifetime maximum limit, or result in higher rates for themselves as individuals or for the group to which they belong. Due to the inevitable "slippage" that will occur in the administration of this secondary coverage, we feel the 50% assumptions is reasonable.

Recommendation I(c) states that recoveries from third party liability insurers and judgments on third-party claims must be reduced by compensation paid or payable from collateral sources.

Current law permits recovery of damages under the bodily injury liability (BI) coverage for damages already paid from PIP coverage and other collateral sources. In fact, the statutes expressly prohibit a PIP carrier from pursuing a right of subrogation against the at-fault party to recover the duplicated benefits. The proposed reform provision would eliminate such duplication received under the BI coverage for damages already compensated under other collateral sources.

It is difficult to measure the dollar impact of this proposal for several reasons. First, the closed claim study asked claim file reviewers whether BI claimants received payments under other coverages. Affirmative responses indicated that in many cases payments were received under the PIP coverage. However, this is not at all unexpected and injured claimants will likely pursue a first party recovery from his own insurer first, then proceed against the tortfeasor's BI coverage. The fact that a claim involves both BI payments and PIP payments does not mean in all cases there is duplication of benefits.

The coverage dynamics make it difficult to obtain information on BI payments made on behalf of an at-fault insured that are being duplicated by the injured claimants PIP carrier.

Those claims involving PIP payments as well as BI payments indicate a maximum duplication of 15% of BI claim payments (\$121,484 in PIP payments paid on behalf of 91 BI claimants, with total BI payments of \$791,794). In states surrounding Maryland, the maximum duplication indicated using a similar calculation is 20%. The countrywide indication is 17.6%.

The closed claim study did ask claim file reviewers whether the BI claimant would be reimbursing a PIP/Medical Payments insurer for amounts paid under BI. Less than 3% of claimants responded "yes" and the dollar amounts associated with those claims amounted to less than 4.5% of BI claim payments. Given the uncertainty involved in estimating the true duplication, we assume that 11% of current BI claim payments are duplicated under the PIP coverage.

While recommendation I(c) of the Commission's Preliminary Report states that third party liability recoveries must be reduced by compensation paid or payable from collateral sources, the discussion portion speaks exclusively to recoveries from the PIP coverage and not to other potential collateral sources (such as medical, wage continuation plans, etc.). Nonetheless, we construe it to apply to benefits paid or payable from all collateral sources including PIP coverage. In effect, this provision makes BI a secondary coverage.

Similar to the discussion above regarding duplication of benefits under the UM coverage, the same situation applies under the BI coverage. That is, there is potential for duplicate recovery of benefits under BI and PIP, as well as between BI and collateral sources. In fact, the potential for duplicate recovery between PIP and BI is even greater than between PIP and UM because generally there will be two insurance companies involved instead of one. Hence, there will be an even greater problem in verifying the existence, much less the coverage terms and conditions, of collateral source recoveries. As a result, we use the same 50% assumption regarding claim dollars that may be recoverable via collateral sources. The overall indicated savings of 27% (see Exhibit VI) is comprised of 11% savings due to reduction in economic loss component and 16% savings due to reductions in the general damages via the multiplier effect.

General damages paid out under the BI coverage amount to 59.3% of total claim dollars. Therefore, the indicated multiplier is 2.46 ($1/1-.593$). Hence a \$1 savings in economic losses is matched by a \$1.46 savings in general damages, or \$2.46 overall.

4. Managed Care (Exhibit VII)

Recommendation 2(a) states that insurers may offer PIP with a managed care option. It further states that major insurers and the Maryland Automobile Insurance Fund (MAIF) must offer PIP with a managed care option for soft-tissue injuries.

The current system for compensating accident victims creates opportunities and incentives for claimants, attorneys, and health care providers to over-treat injuries, or treat non-existent injuries, in order to maximize recoveries. One method to reduce any opportunity for over-treatment of injuries is to require that PIP benefits for soft-tissue injuries be delivered in a managed care setting.

To assess the impact of managed care, we have only one reliable source of data - the experience for the state of Colorado. Effective July 1, 1991, Colorado passed legislation requiring private passenger automobile insurers to offer a managed care feature to their PIP insureds. The industry's loss experience shows a dramatic reduction in PIP claim severity subsequent to the managed care reforms. Our reading of Colorado statutes and discussions with industry sources indicate no other statutory or regulatory changes were implemented at the same time as the managed care reforms, other than the implementation of optional deductibles and co-payments with the managed care feature.

Prior to estimating the impact of managed care on the cost of providing PIP coverage in the state of Maryland, we must address three important assumptions:

- the expected distribution of insureds choosing the managed care option;
- the percentage of claim dollars affected by managed care; and
- the corresponding savings to medical dollars paid out under the BI and UM coverages.

According to Recommendation 2(a), the managed care option must be offered by "major" insurers and the MAIF. The managed care feature will apply only to "soft-tissue" injuries. It is our understanding that the definition of soft-tissue relates to injuries involving sprains and strains. According to the IRC closed claim study, 81% of PIP claim dollars paid in the state of Maryland involve sprains/strains.

We can gain some insight into the potential savings resulting from the managed care option by reviewing recent experience in Colorado.

According to a recent article in *Bast's Review*, the "majority of insureds" have chosen the optional managed care feature in Colorado. We have no definitive evidence as to the true distribution of

insureds choosing that option, however, sources within a large insurer have indicated to us that less than half of their Colorado insureds have chosen the managed care option.

We do know that the average PIP claim severity in Colorado dropped significantly during the three year period subsequent to the managed care implementation. In fact we estimate the reduction as 38%, if we assume a 12.9% annual trend in claim severity implied by linear regression over the 5 year period just prior to the implementation of managed care. Not only is a 38% reduction indicated, but the average annual change in claim severity appears to have moderated as well. A linear regression over the latest 7 quarterly points indicates an average annual trend of 7.2%.

If we consider that half of the Colorado insureds have chosen the managed care option, and that there has been a 38% reduction in claim severity, one may conclude that the savings due to managed care is double the 38%. Several important items need to be considered prior to drawing conclusions as to the impact of managed care in Colorado. First, many companies offered deductibles and co-payment features with the managed care option. Secondly, there were unusual circumstances in Colorado prior to the managed care implementation in 1991.

Colorado amended its no-fault law in 1985, increasing the monetary tort threshold from \$500 to \$2,500 and increasing the minimum PIP policy limit from \$25,000 to \$50,000. Subsequently, the PIP claim severity exploded and the BI claim frequency didn't moderate at all (as legislators had anticipated). In fact, there was a considerable movement among claimants to build up their economic losses such that the tort threshold would be met and recovery of noneconomic losses would follow. About the same time as the implementation of managed care, there was a high profile expose of fraud rings in and around the Denver area by a local television station. We are uncertain as to the impact such publicity had on the claiming behavior of individuals (as well as on the attitudes of plaintiff attorneys), however, the drop-off in PIP claim severity occurred shortly thereafter (coincident with the implementation of managed care), and the ratio of BI to PD claims (often used as a measure of litigiousness) leveled off, after many years of steady increases.

Perhaps the best indicator of the impact of managed care is in the premium discounts offered by major Colorado insurers, which range from 20% to 23%. However, the Colorado program does not require that treatment received within the first 24 hours of the accident be provided in a managed care environment. There have been numerous studies regarding the impact of managed care on health care costs in general. Most studies indicate savings upwards of 20%, depending on the nature of the managed care provisions (i.e., medical fee schedules, peer review, utilization review, capitation, and so forth).

For the purpose of this study, we assume:

- 50% of Maryland insureds would choose a managed care feature;
- managed care will have no impact on medical costs paid out under BI and UM coverages;

- Injuries sustained in out-of-state claims will generally be treated within the context of a managed care environment (since the insured agreed to it, regardless of where the accident occurred); and
- the managed care features as outlined in Recommendations 2(a) and 2(b) (which include medical fee schedules, peer review and utilization review) will lower affected medical costs by 30%.

Therefore, the impact on PIP costs is estimated as -9.5%:

| | |
|--|-------|
| 1) % of Losses - Medical | 78.1% |
| 2) % of Losses - Soft-Tissue | 81.0 |
| 3) % Choosing Managed Care | 50.0 |
| 4) Estimated % Savings | 30.0 |
| 5) Projected Cost Impact (1)x(2)x(3)x(4) | -9.5% |

5. Treatment of Soft Tissue Injuries (Exhibit VIII)

Recommendation 2(b) states that health care providers may not charge more for the treatment of soft-tissue injuries arising from automobile accidents than would be reimbursed by Medicare. Furthermore, third-party defendants may not be liable for medical costs associated with the treatment of soft-tissue injuries arising from automobile accidents in an amount greater than would be reimbursed under Medicare, or if a peer review organization determines that the treatment fails to conform to professional standards of performance or is not medically necessary.

As reimbursements under the Medicare system are typically less than those otherwise considered reasonable and customary, there is potential for savings.

According to data provided by the HCFA, the Medicare fee schedule reimburses approximately 50% of hospital reasonable and customary charges, and 75% of physician's charges. The latest data available is for 1992, indicating an overall reimbursement level of 56% for hospital and physician charges combined. After systematic declines in the reimbursement levels from 1984 through 1991, it appears the Medicare fee schedule reimbursement level has stabilized at about 55% in 1992.

We have some empirical evidence as to the effectiveness of the Medicare fee schedule as it relates to the cost of injuries sustained in automobile accidents. In 1989, the Commonwealth of Pennsylvania implemented several reforms to its no-fault law (Act 6), including the imposition of the Medicare fee schedule (actually 110% of the schedule, with exceptions). Since then, there have been steady declines in the average PIP claim severity. However, many provisions of the

no-fault law affected the PIP claim severity, including a reduction in the minimum limits that insureds have to purchase.

A retrospective review of the impact of Act 6 in Pennsylvania indicates that the Medicare fee schedule (at 110%, with exceptions) lowered medical costs by approximately 25 to 30%. The impact of a similar schedule will likely produce similar savings. For medical dollars incurred outside a managed care environment, we assume a 25% savings due to the Medicare fee schedule:

| | <u>BI</u> | <u>PIP</u> | <u>UM</u> |
|--|-----------|------------|-----------|
| 1) % of Losses - Medical | .319 | .781 | .405 |
| 2) % of Losses - Soft-Tissue | .850 | .810 | .750 |
| 3) % of Claim Dollars in State | .843 | 1.00 | .671 |
| 4) % not Choosing Managed Care | | .50 | |
| 5) Estimated % Savings | 25% | 25% | 25% |
| 6) Projected Cost Impact (1)x(2)x(3)x(4)x(5) | -5.7% | -7.9% | -5.1% |
| 7) Multiplier | 2.46 | 1.00 | 2.02 |
| 8) Cost Impact including multiplier (6)x(7) | -14.0% | -7.9% | -10.3% |

The 14% savings to BI costs is heavily influenced by the 2.46 multiplier, as is the 10.3% savings to UM costs.

6. Restrictions on Solicitations by Attorneys

Recommendation 2(c) states that attorneys may not send targeted direct-mail solicitations to automobile accident victims or their relatives for 30 days following an accident.

Similar to the rule in Florida, this provision attempts to mitigate attorney involvement in auto injury claims. We have no reliable information as to the impact of such a rule being implemented in Maryland, because the implementation of the rule in Florida has been tied up in the courts for several years and was only recently upheld by the U. S. Supreme Court.

Originally passed by the Florida Bar in 1990, the Florida Supreme Court upheld the Bar's amendments to the rules of advertising in the state of Florida. In March 1992, the rules were challenged in District Court. The District Court referred the parties' competing summary judgment motions to a Magistrate Judge, who concluded the new rules served the government's interests fully in compliance with the law. The District Court rejected the Magistrate Judge's report and recommendations and entered summary judgment for the plaintiffs in 1992. The Eleventh Circuit affirmed on similar grounds in 1994. In a 5-4 decision, the U. S. Supreme Court reversed the lower court decision, effectively re-implementing the rules barring targeted direct-mail solicitations to automobile accident victims and relatives for 30 days following an accident.

In the brief amount of time when the rules were in effect (i.e., late 1990 through early 1992), there is no evidence to support an estimate of cost savings. The impact of the U.S. Supreme Court's reversal in June 1995 will not be known for several more months. Given the uncertainties

surrounding its effect, we assume the implement of Recommendation 2(c) will lower otherwise indicated BI and UM costs by 1%.

7. Restrictions on Recovery of UM Benefits

Recommendation 3(a) states that an insured may not recover uninsured motorist (UM) benefits without physical evidence of contact between the insured's vehicle and the hit-and-run vehicle.

Insureds who accidentally cause damage to their own vehicle may claim the damage was caused by a hit-and-run or "phantom" vehicle, and collect under their UM coverage. The so-called "contact rule" helps to reduce unnecessary and fraudulent UM claim payments. While the IRC closed claim study did not directly ask about phantom cars, there was a question as to the number of vehicles involved in the accident. The closed claim study did not address UM-PD claim files. We assume a 10% savings to the UM-PD costs would result from implementing this recommendation. The impact on mandatory coverage costs is relatively minor, at -0.02%.

8. Other Provisions

Recommendation 3(b) states that an accident reporting unit shall be established within the Baltimore City police department as a pilot program.

The lack of a police report from an accident scene creates the opportunity for insurance fraud. A pilot program limited initially to the city of Baltimore would be a first step in assessing the proposal's benefits.

Recommendation 3(c) requires reporting of evidence of attorney or health care provider fraud to the appropriate licensing boards and to the Insurance Fraud Division, and the mandatory revocation of the license of any attorney or health care provider convicted of insurance fraud.

Currently, evidence of fraud on the part of these professionals is not always referred to the appropriate licensing board for disciplinary action and disciplinary action is not always taken.

Recommendation 3(d) states that a person may not pay or receive compensation for directing or referring an automobile accident victim to an attorney or health care provider.

This is a restriction on the use of paid "runners" to direct accident victims to particular attorneys or clinics.

Recommendation 3(e) states that before a claim has been made, an insurer may cancel and rescind a policy of an insured who makes a material misrepresentation in the application for automobile insurance if the insurer would not have issued the policy if the true facts had been made known to the insurer as required by the application; after a claim has been made, an insurer may deny first party benefits to the insured.

If a person procures insurance fraudulently, the cost of that fraud is borne by the drivers who procured their insurance honestly. This provision will limit this cost-shift and permit insurers to immediately cancel and rescind the policy if the fraud is discovered before a claim is made and to deny first-party benefits to the insured if the fraud is discovered after a claim is made.

Recommendations 3(b) through 3(e) may have an impact on costs long term, however, we know of no definitive data available to quantify their impact.

9. Optional Coverages

Recommendations 4(a) and 4(b) state that the PIP and UM coverages must be made available, however, will be optional. In addition, insureds choosing not to purchase UM coverage may not claim against the Unsatisfied Claim and Judgment Fund. There will be cost savings to individual consumers that do not purchase the heretofore mandatory coverages.

These provisions involve no direct cost savings to the system, but will result in premium savings for those insureds choosing to forego purchase of the coverages. In fact, making PIP optional will serve to increase costs under the BI coverage, if the insureds who decline the coverages are not duplicating their coverage under the current system. In addition, the multiplier effect may tend to magnify the increase in BI costs resulting from the transfer of economic losses from PIP. The table below displays impact on BI cost for several assumed levels of PIP cost reduction resulting from insureds declining PIP coverage.

| % Reduction in PIP Costs | Maximum % Impact on BI Costs | |
|-----------------------------|------------------------------|-------------------|
| | Statewide | City of Baltimore |
| 10% | +7.7% | +7.6% |
| 25 | +19.3 | +19.0 |
| 50 | +38.6 | +38.0 |
| 75 | +58.0 | +57.0 |
| 100 | +77.3 | +75.9 |

10. Reduction of Accident Costs

Recommendations 6(a) through 6(c) state that:

- a) *Cameras may be installed at high-risk intersections to photograph red-light violations.*
- b) *Police may stop a vehicle for a seat-belt or child restraint violation.*
- c) *No person may use or operate a radar detector.*

All three provisions may have some impact on insurance costs, especially in changing certain driving behavior, but their long-term impact is uncertain.

Summary

The estimated impact of the several statutory reforms outlined in the Commission's Preliminary Report are significant. The broad-based reforms address both medical costs, attorney involvement and fraud. The expected savings in losses of 27.3% statewide amounts to approximately \$249 million. The indicated premium savings statewide for the average amount of mandated coverage is 21.5%.

In the city of Baltimore, the expected savings in losses anticipated is slightly higher, at 30.7%, while the indicated premium savings to city residents for the average amount of mandated coverage is 24.2%.

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Exhibit

- I. Summary of Estimated Premium Savings
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 - b. City of Baltimore
- II. Projected Impact of Proposed Reforms
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- III. Projection of Mandatory Coverage Costs
 - a. Statewide
 - b. City of Baltimore
- IV. Private Passenger Auto Liability Loss Data and Trends
- V. Impact of Secondary PIP Coverage
- VI. Impact of Restrictions on Duplicate Recoveries
- VII. Impact of Managed Care
- VIII. Impact of Medicare Fee Schedule

Impact of Estimated Cost Savings on Premiums Statewide

I. Assumptions

- 1) Relative rate adequacy remains unchanged.
- 2) The expense components of the rate, separated between the variable and fixed elements are as follows:

| | % of Written Premium (NAIC data) | | |
|-------------------------|----------------------------------|----------|-------|
| | Fixed | Variable | Total |
| Commissions & Brokerage | | 8.2% | 8.2% |
| Other Acquisition | 5.6% | | 5.6% |
| General | 4.3% | | 4.3% |
| Taxes, Licenses & Fees | | 2.2% | 2.2% |

- 3) Variable expenses will remain same percentage of new premium

- 4) The 1993 loss ratio for private passenger automobile liability in Maryland according to NAIC Profitability Data was 65.9%, and the ratio of loss adjustment expenses (both allocated and unallocated) to premiums was 15.3%. Assuming that ALAE is approximately 9% of losses, the resulting combined loss and ALAE ratio is 71.8%. Hence, the ratio of ULAE to premium is 9.4% (15.3% - 5.9%). We assume the ULAE are fixed expenses.

II. Impact of Cost Savings on Premiums

| Component of Premium | Present Losses & Expenses | Estimated Cost Savings | New Loss & Expense Component | % of New Premium |
|----------------------|---------------------------|------------------------|------------------------------|------------------|
| (1) | (2) | (3) | (4) | (5) |
| Losses + ALAE | \$71.80 | 27.3% | \$52.17 | 66.5% |
| ULAE | 9.40 | 0 | 9.40 | 12.0% |
| Variable Expenses | 10.40 | 0 | 8.16 | 10.4% |
| Fixed Expenses | 9.90 | 0 | 9.90 | 12.6% |
| Und. Profit/Loss | -1.50 | 0 | -1.18 | -1.5% |
| Total Premium | \$100.00 | | \$78.45 | |

Indicated Reduction in Premium

21.5%

Column

- (2) Assumed premium of \$100
- (3) From Exhibit II
- (4) Col (2) x [1 - Col (3)] for losses and ALAE
Col (2) for ULAE and fixed expenses
Col (5) x Total Col (4) for variable expenses and Und. P/L
- (5) Col (4) / Total Col (4)

Impact of Estimated Cost Savings on Premiums City of Baltimore

I. Assumptions

- 1) Relative rate adequacy remains unchanged.
- 2) The expense components of the rate, separated between the variable and fixed elements are as follows:

| | % of Written Premium (NAIC data) | | |
|-------------------------|----------------------------------|----------|-------|
| | Fixed | Variable | Total |
| Commissions & Brokerage | | 8.2% | 8.2% |
| Other Acquisition | 5.6% | | 5.6% |
| General | 4.3% | | 4.3% |
| Taxes, Licenses & Fees | | 2.2% | 2.2% |

- 3) Variable expenses will remain same percentage of new premium

- 4) The 1993 loss ratio for private passenger automobile liability in Maryland according to NAIC Profitability Data was 65.9%, and the ratio of loss adjustment expenses (both allocated and unallocated) to premiums was 15.3%. Assuming that ALAE is approximately 9% of losses, the resulting combined loss and ALAE ratio is 71.8%. Hence, the ratio of ULAE to premium is 9.4% (15.3% - 5.9%). We assume the ULAE are fixed expenses.

II. Impact of Cost Savings on Premiums

| Component of Premium | Present Losses & Expenses | Estimated Cost Savings | New Loss & Expense Component | % of New Premium |
|----------------------|---------------------------|------------------------|------------------------------|------------------|
| (1) | (2) | (3) | (4) | (5) |
| Losses + ALAE | \$71.80 | 30.7% | \$49.76 | 65.6% |
| ULAE | 9.40 | 0 | 9.40 | 12.4% |
| Variable Expenses | 10.40 | 0 | 7.88 | 10.4% |
| Fixed Expenses | 9.90 | 0 | 9.90 | 13.1% |
| Und. Profit/Loss | -1.50 | 0 | -1.14 | -1.5% |
| Total Premium | \$100.00 | | \$75.81 | |

Indicated Reduction in Premium

24.2%

Column

- (2) Assumed premium of \$100
- (3) From Exhibit II
- (4) Col (2) x [1 - Col (3)] for losses and ALAE
Col (2) for ULAE and fixed expenses
Col (5) x Total Col (4) for variable expenses and Und. P/L
- (5) Col (4) / Total Col (4)

Maryland - Private Passenger Auto Liability Projected Impact of Proposed Statutory Reforms

| Coverage (1) | Secondary PIP Coverage (2) | Duplicate Recovery Restrictions (3) | Managed Care Option (4) | Treatment of Soft-Tissue Injuries (5) | Restrictions on Attorney Solicitations (6) | Restrictions on Recovery - Phantom Vehicles (7) | Other (8) | Composite Total (9) |
|-----------------|-------------------------------------|--|----------------------------------|--|---|---|--------------|---------------------------|
| BI | 0.9900 | 0.7300 | 1.0000 | 0.8596 | 0.9900 | 1.0000 | 1.0000 | 0.6150 |
| PD | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 |
| PIP | 0.7358 | 1.0000 | 0.9051 | 0.9209 | 1.0000 | 1.0000 | 1.0000 | 0.6133 |
| UM-BI | 0.9900 | 0.7872 | 1.0000 | 0.8969 | 0.9900 | 1.0000 | 1.0000 | 0.6919 |
| UM-PD | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 0.9000 | 1.0000 | 0.9000 |
| UIM-BI | 0.9900 | 0.7872 | 1.0000 | 0.8969 | 0.9900 | 1.0000 | 1.0000 | 0.6919 |
| TOTAL* | 0.9522 | 0.8519 | 0.9848 | 0.9107 | 0.9944 | 0.9998 | 1.0000 | 0.7266 |

Column

- (2) From report text, pages 9-10
 (3) From Exhibit VI
 (4) From report text, page 15
 (5) From report text, page 17
 (6) From report text, page 18
 (7) From report text, page 18
 (8) From report text, pages 18-19
 (9) (2) x (3) x (4) x (5) x (6) x (7) x (8)

* Total effects weighted using system costs by coverage (Exhibit IIIa) as weights

City of Baltimore - Private Passenger Auto Liability

Projected Impact of Proposed Statutory Reforms

| Coverage (1) | Secondary PIP Coverage (2) | Duplicate Recovery Restrictions (3) | Managed Care Option (4) | Restrictions | | | Composite Total (9) |
|-----------------|-------------------------------------|--|----------------------------------|-----------------|--|--------------|---------------------------|
| | | | | Injuries (5) | Soft-Tissue on Attorney Solicitation (6) | Other (8) | |
| BI | 0.9900 | 0.7300 | 1.0000 | 0.8596 | 0.9900 | 1.0000 | 0.6150 |
| PD | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 |
| PIP | 0.7358 | 1.0000 | 0.9051 | 0.9209 | 1.0000 | 1.0000 | 0.6133 |
| UM | 0.9900 | 0.7872 | 1.0000 | 0.8969 | 0.9900 | 1.0000 | 0.6919 |
| UM-PD | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 1.0000 | 0.9000 |
| UIM | 0.9900 | 0.7872 | 1.0000 | 0.8969 | 0.9900 | 1.0000 | 0.6919 |
| TOTAL* | 0.9370 | 0.8437 | 0.9795 | 0.9020 | 0.9941 | 1.0000 | 0.6930 |

Column

(2) From report text, pages 9-10

(3) From Exhibit VI

(4) From report text, page 15

(5) From report text, page 17

(6) From report text, page 18

(7) From report text, page 18

(8) From report text, pages 18-19

(9) (2) x (3) x (4) x (5) x (6) x (7) x (8)

*

Total effects weighted using system costs in City of Baltimore by coverage (Exhibit IIIb) as weights

Maryland - Private Passenger Auto Liability

Projection of Mandatory Coverage Costs

| Coverage (1) | Industry Data as of 3/31/95 | | Selected Annual Trend | | Trended to 7/1/96 | |
|-----------------|--------------------------------|------------------|--------------------------|------------------|-------------------|------------------|
| | Freq (2a) | Severity (2b) | Freq (3a) | Severity (3b) | Freq (4a) | Severity (4b) |
| BI | 0.01493 | \$9,389 | 0.5% | 2.0% | 0.01508 | \$9,720 |
| PD | 0.04430 | 1,723 | 3.0% | 5.0% | 0.04700 | 1,877 |
| PIP | 0.02083 | 2,232 | 1.5% | 3.0% | 0.02146 | 2,350 |
| UM-BI | 0.00149 | 9,389 | 0.5% | 2.0% | 0.00151 | 9,720 |
| UM-PD | 0.00044 | 1,500 | 3.0% | 5.0% | 0.00047 | 1,634 |
| UIM-BI | 0.00007 | 18,778 | 0.5% | 2.0% | 0.00008 | 19,440 |

| Coverage (1) | Selected Freq (5a) | Severity (5b) | Assumed Exposures (6) | Claim Counts (7) | Average Claim Cost with ALAE (8) | System Costs (millions) (9) | % of Total (10) | Dollar Cost per Car (11) |
|-----------------|--------------------------|------------------|-----------------------------|------------------------|---|--------------------------------------|-----------------------|-----------------------------------|
| BI | 0.01510 | \$9,725 | 2,500,000 | 37,750 | \$11,184 | \$422.2 | 50.8% | \$168.87 |
| PD | 0.04700 | 1,875 | 2,500,000 | 117,500 | 1,969 | 231.3 | 27.9% | 92.53 |
| PIP | 0.02150 | 2,350 | 2,500,000 | 53,750 | 2,468 | 132.6 | 16.0% | 53.05 |
| UM-BI | 0.00150 | 9,725 | 2,500,000 | 3,750 | 10,211 | 38.3 | 4.6% | 15.32 |
| UM-PD | 0.00050 | 1,635 | 2,500,000 | 1,250 | 1,635 | 2.0 | 0.2% | 0.82 |
| UIM-BI | 0.00008 | 19,500 | 2,500,000 | 200 | 20,475 | 4.1 | 0.5% | 1.64 |
| | | | | | | \$830.6 | 100.0% | \$332.23 |

Column

- (2) Frequencies and Average Claim costs for BI, PD and PIP from ISO/NAII Fast Track for year ending 3/31/95. Based upon a 1989 AIRAC study of Uninsured Motorists, the UM-BI frequency is assumed to be 10% of the BI frequency and the UM average claim cost is assumed to be the same as that for BI. Likewise, the UIM claim frequency is assumed to be 0.5% of BI, and UIM severity is assumed to be 2 times higher than BI. The UM-PD frequency is assumed to be 1% of the PD frequency and the claim severity is assumed to be \$1,500 per claim.
- (3) Based upon derived trends from Fast Track data (refer to Exhibit IV)
- (4) Trended 1.75 years from 9/30/94 (i.e. midpoint of year ending 3/31/95)
- (5) Selected based on Col (4)
- (6) Assumed 2.5 million insureds, all of which must purchase BI, PD, PIP, UM and UIM
- (7) Col (5a) x Col (6)
- (8) Cost loaded for ALAE (15% for BI, 5% for PD, PIP, UM and UIM)
- (9) Col (7) x Col (8)
- (10) Col (9) / Total Col (9)
- (11) Col (9) / Col (6)

City of Baltimore - Private Passenger Auto Liability

Projection of Mandatory Coverage Costs

| Coverage (1) | Industry Data as of 3/31/95 | | Selected Annual Trend | | Trended to 7/1/96 | |
|-----------------|--------------------------------|------------------|--------------------------|------------------|-------------------|------------------|
| | Freq (2a) | Severity (2b) | Freq (3a) | Severity (3b) | Freq (4a) | Severity (4b) |
| BI | 0.02986 | \$8,920 | 0.5% | 2.0% | 0.03016 | \$9,234 |
| PD | 0.05538 | 1,697 | 3.0% | 5.0% | 0.05875 | 1,848 |
| PIP | 0.04583 | 2,455 | 1.5% | 3.0% | 0.04721 | 2,586 |
| UM-BI | 0.00254 | 8,920 | 0.5% | 2.0% | 0.00256 | 9,234 |
| UM-PD | 0.00075 | 1,425 | 3.0% | 5.0% | 0.00080 | 1,552 |
| UIM-BI | 0.00015 | 17,839 | 0.5% | 2.0% | 0.00015 | 18,468 |

| Coverage (1) | Selected Freq (5a) | Selected Severity (5b) | Assumed Exposures (6) | Claim Counts (7) | Average Claim Cost with ALAE (8) | System Costs (millions) (9) | % of Total (10) | Dollar Cost per Car (11) |
|-----------------|--------------------------|------------------------------|-----------------------------|------------------------|---|--------------------------------------|-----------------------|-----------------------------------|
| BI | 0.03020 | \$9,235 | 150,000 | 4,530 | \$10,620 | \$48.1 | 54.2% | \$320.73 |
| PD | 0.05870 | 1,850 | 150,000 | 8,805 | 1,943 | 17.1 | 19.3% | 114.02 |
| PIP | 0.04720 | 2,585 | 150,000 | 7,080 | 2,714 | 19.2 | 21.6% | 128.11 |
| UM-BI | 0.00260 | 9,235 | 150,000 | 390 | 9,697 | 3.8 | 4.3% | 25.21 |
| UM-PD | 0.00080 | 1,550 | 150,000 | 120 | 1,550 | 0.2 | 0.2% | 1.24 |
| UIM-BI | 0.00015 | 18,500 | 150,000 | 23 | 19,425 | 0.4 | 0.5% | 2.91 |
| | | | | | | \$88.8 | 100.0% | \$592.23 |

Column
(2)

Indicated frequencies and severities calculated as multiples of statewide frequencies and severities, based upon IRC report "Trends in Auto Injury Claims", February, 1995:

| Coverage | Baltimore Multiple | |
|----------|--------------------|----------|
| | Freq. | Severity |
| BI | 2.00 | 0.950 |
| PD | 1.25 | 0.985 |
| PIP | 2.20 | 1.100 |
| UM-BI | 1.70 | 0.950 |
| UM-PD | 1.70 | 0.950 |
| UIM-BI | 2.00 | 0.950 |

- (3) Assume trends for City of Baltimore are same as statewide
 (4) Trended 1.75 years from 9/30/94 (i.e. midpoint of year ending 3/31/95)
 (5) Selected based on Col (4)
 (6) Assumed 150,000 insureds, all of which must purchase BI, PD, PIP, UM and UIM
 (7) Col (5a) x Col (6)
 (8) Cost loaded for ALAE (15% for BI, 5% for PD, PIP, UM and UIM)
 (9) Col (7) x Col (8)
 (10) Col (9) / Total Col (9)
 (11) Col (9) / Col (6)

State: Maryland

Private Passenger Auto Loss Data and Trends

Exhibit IV
Sheet 1

| Year Ending Quarter | Bodily Injury | | | Property Damage | | | Personal Injury Protection | | |
|---------------------------|-------------------------|---------------------------|-----------------|-------------------------|---------------------------|-----------------|----------------------------|---------------------------|-----------------|
| | Paid Claim Freq.* | Paid Claim Severity | Pure Premium | Paid Claim Freq.* | Paid Claim Severity | Pure Premium | Paid Claim Freq.* | Paid Claim Severity | Pure Premium |
| 91-1 | 15.14 | \$9,544 | \$144.46 | 43.39 | \$1,549 | \$67.19 | 20.84 | \$2,095 | \$43.67 |
| 91-2 | 14.97 | 9,870 | 147.77 | 42.58 | 1,546 | 65.81 | 20.43 | 2,155 | 44.02 |
| 91-3 | 15.02 | 9,972 | 149.79 | 42.02 | 1,530 | 64.28 | 20.17 | 2,154 | 43.45 |
| 91-4 | 14.99 | 10,039 | 150.47 | 41.53 | 1,528 | 63.46 | 19.76 | 2,176 | 43.01 |
| 92-1 | 15.02 | 10,006 | 150.24 | 41.44 | 1,518 | 62.90 | 19.50 | 2,166 | 42.23 |
| 92-2 | 15.06 | 9,687 | 145.93 | 41.34 | 1,517 | 62.73 | 19.48 | 2,163 | 42.14 |
| 92-3 | 15.01 | 9,666 | 145.13 | 41.22 | 1,530 | 63.08 | 19.61 | 2,168 | 42.50 |
| 92-4 | 15.06 | 9,518 | 143.37 | 41.54 | 1,536 | 63.80 | 19.60 | 2,162 | 42.38 |
| 93-1 | 15.10 | 9,561 | 144.33 | 41.60 | 1,552 | 64.58 | 19.89 | 2,144 | 42.65 |
| 93-2 | 15.07 | 9,770 | 147.19 | 41.85 | 1,561 | 65.34 | 20.08 | 2,139 | 42.96 |
| 93-3 | 14.99 | 9,779 | 146.59 | 42.08 | 1,568 | 65.97 | 20.17 | 2,121 | 42.79 |
| 93-4 | 14.90 | 9,938 | 148.09 | 42.18 | 1,590 | 67.08 | 20.32 | 2,101 | 42.67 |
| 94-1 | 14.81 | 9,858 | 145.99 | 43.45 | 1,591 | 69.12 | 19.97 | 2,141 | 42.76 |
| 94-2 | 14.84 | 9,765 | 144.93 | 43.66 | 1,609 | 70.24 | 19.67 | 2,188 | 43.03 |
| 94-3 | 14.82 | 9,633 | 142.75 | 44.27 | 1,636 | 72.43 | 19.83 | 2,198 | 43.59 |
| 94-4 | 14.90 | 9,453 | 140.87 | 44.82 | 1,663 | 74.53 | 20.21 | 2,231 | 45.09 |
| 95-1 | 14.93 | 9,389 | 140.15 | 44.30 | 1,723 | 76.33 | 20.83 | 2,232 | 46.50 |

ANNUAL TRENDS

Linear

| | | | | | | | | | |
|--------|-------|-------|-------|------|------|-------|------|------|------|
| 1 Year | 0.8% | -5.2% | -4.4% | 2.6% | 7.7% | 10.3% | 4.5% | 4.1% | 8.6% |
| 2 Year | -0.7% | -1.4% | -2.1% | 4.0% | 4.7% | 8.7% | 0.9% | 2.7% | 3.6% |
| 3 Year | -0.5% | -0.8% | -1.3% | 2.9% | 3.8% | 6.7% | 1.4% | 0.9% | 2.4% |

Exponential

| | | | | | | | | | |
|--------|-------|-------|-------|------|------|-------|------|------|------|
| 1 Year | 0.8% | -5.1% | -4.3% | 2.6% | 8.0% | 10.9% | 4.6% | 4.2% | 9.0% |
| 2 Year | -0.7% | -1.5% | -2.1% | 4.0% | 4.8% | 9.0% | 0.9% | 2.7% | 3.6% |
| 3 Year | -0.5% | -0.8% | -1.3% | 3.0% | 3.8% | 6.9% | 1.5% | 0.9% | 2.4% |

*Frequency is per 1,000 earned car years.

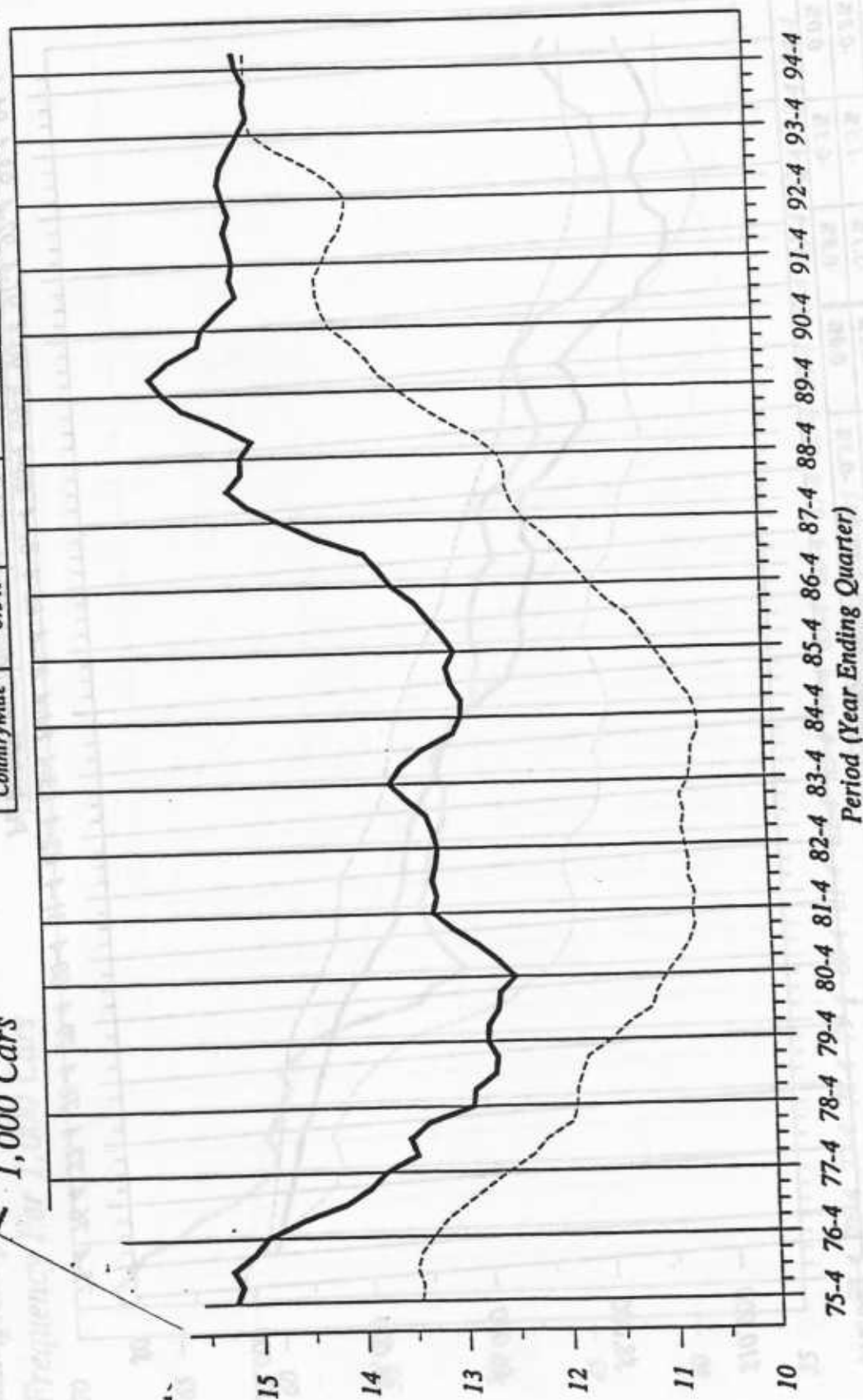
Source: ISO/NAII Private Passenger Fast Track Data

Tillinghast

A Towers Perrin Company

Liability 1,000 Cars

| Annual Trends | Linear | | | Exponential | | |
|---------------|--------|---------|---------|-------------|---------|---------|
| | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| Maryland | 0.8% | -0.7% | -0.5% | 0.8% | -0.7% | -0.5% |
| Countrywide | -0.3% | 2.2% | 2.5% | -0.3% | 2.3% | 2.5% |

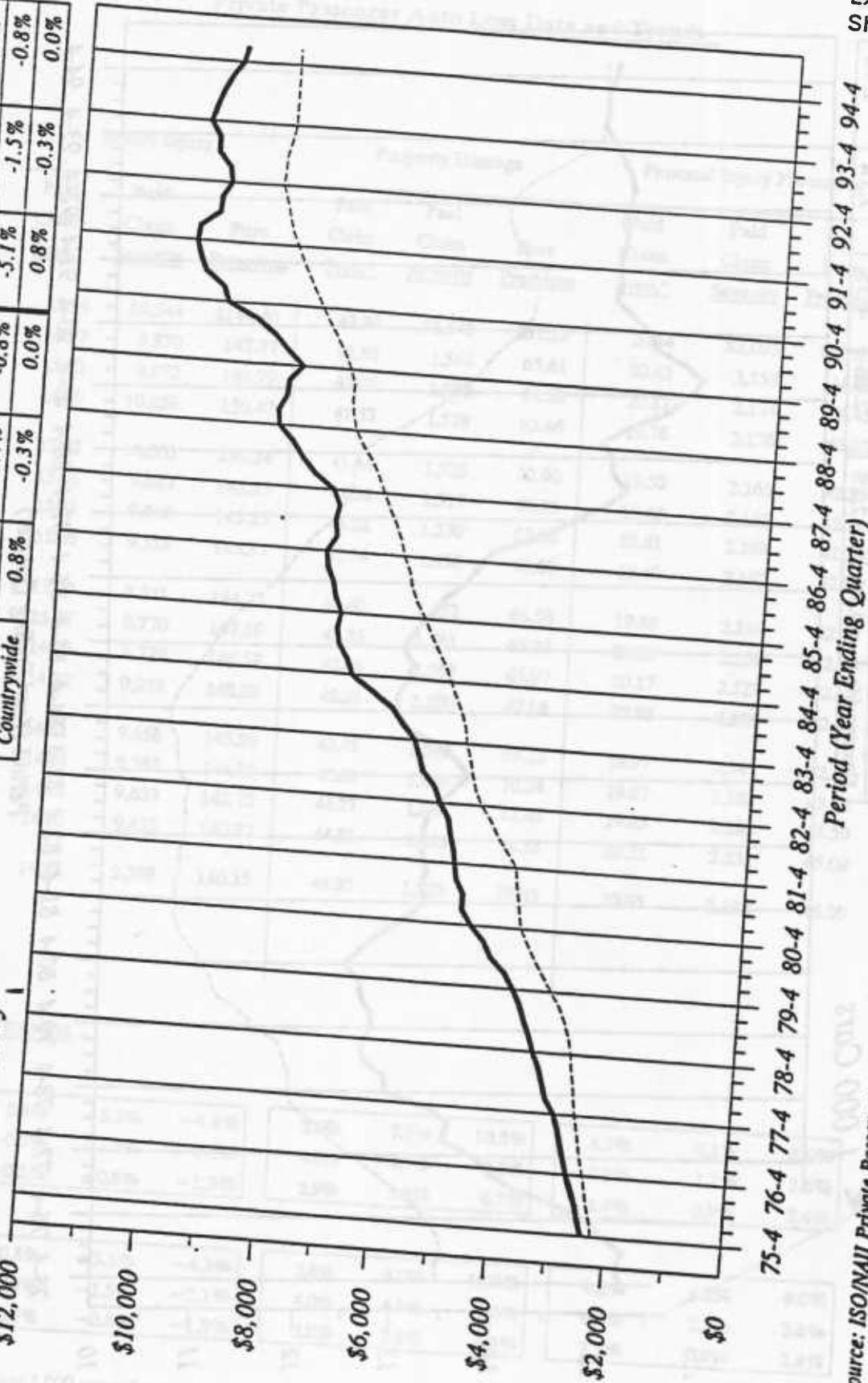


Maryland Countrywide

Source: ISO/NAII Private Passenger
Fast Track Data

Bodily Injury Liability Average Claim Severity

| Annual Trends | Linear | | | Exponential | | |
|---------------|--------|---------|---------|-------------|---------|---------|
| | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| Maryland | -5.2% | -1.4% | -0.8% | -5.1% | -1.5% | -0.8% |
| Countrywide | 0.8% | -0.3% | 0.0% | 0.8% | -0.3% | 0.0% |

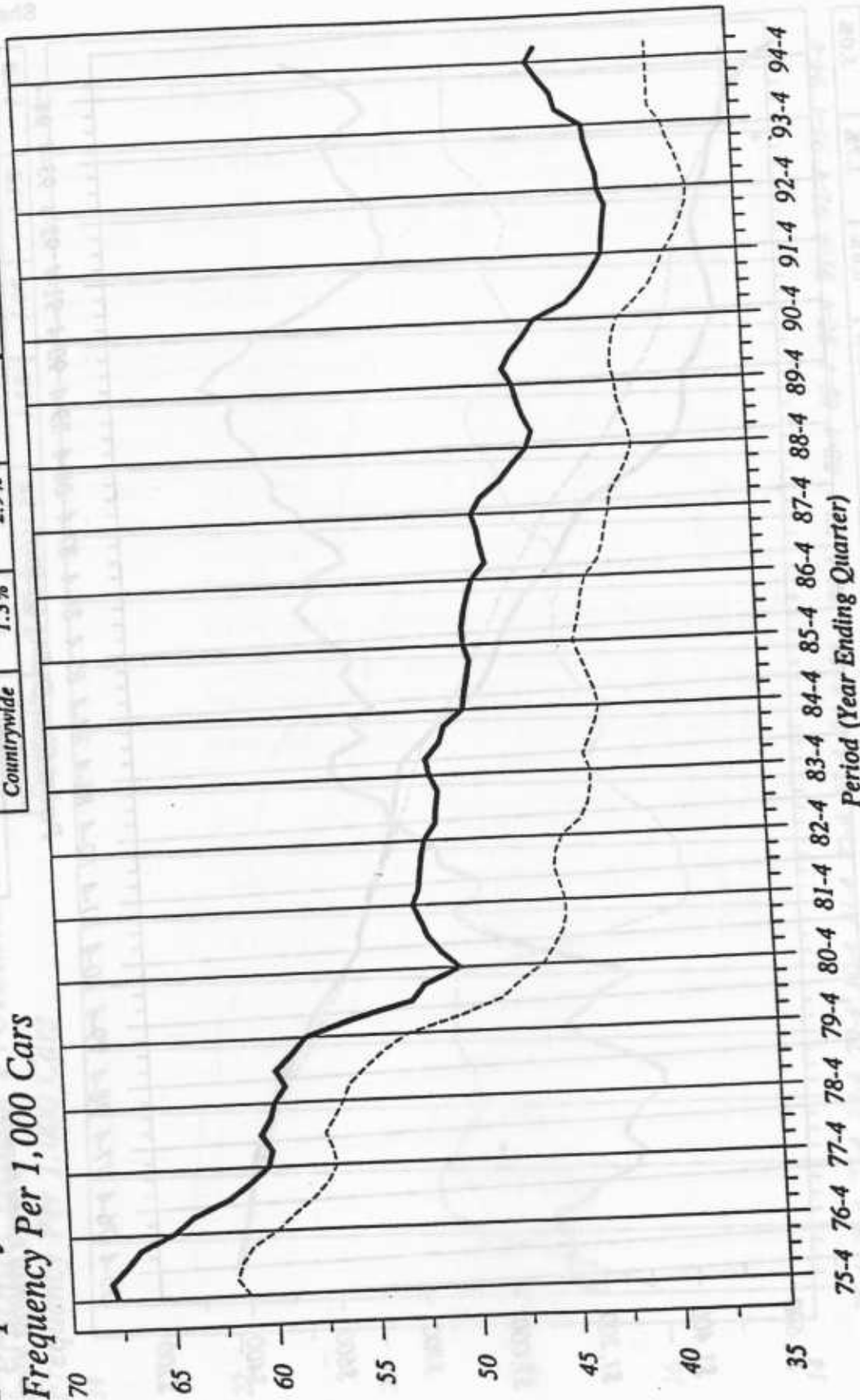


Source: ISO/NAII Private Passenger
Fast Track Data

Maryland Countrywide

Property Damage Liability Frequency Per 1,000 Cars

| Annual Trends | Linear | | | Exponential | | |
|---------------|--------|---------|---------|-------------|---------|---------|
| | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| Maryland | 2.6% | 4.0% | 2.9% | 2.6% | 4.0% | 3.0% |
| Countrywide | 1.3% | 2.9% | 2.1% | 1.3% | 2.9% | 2.1% |

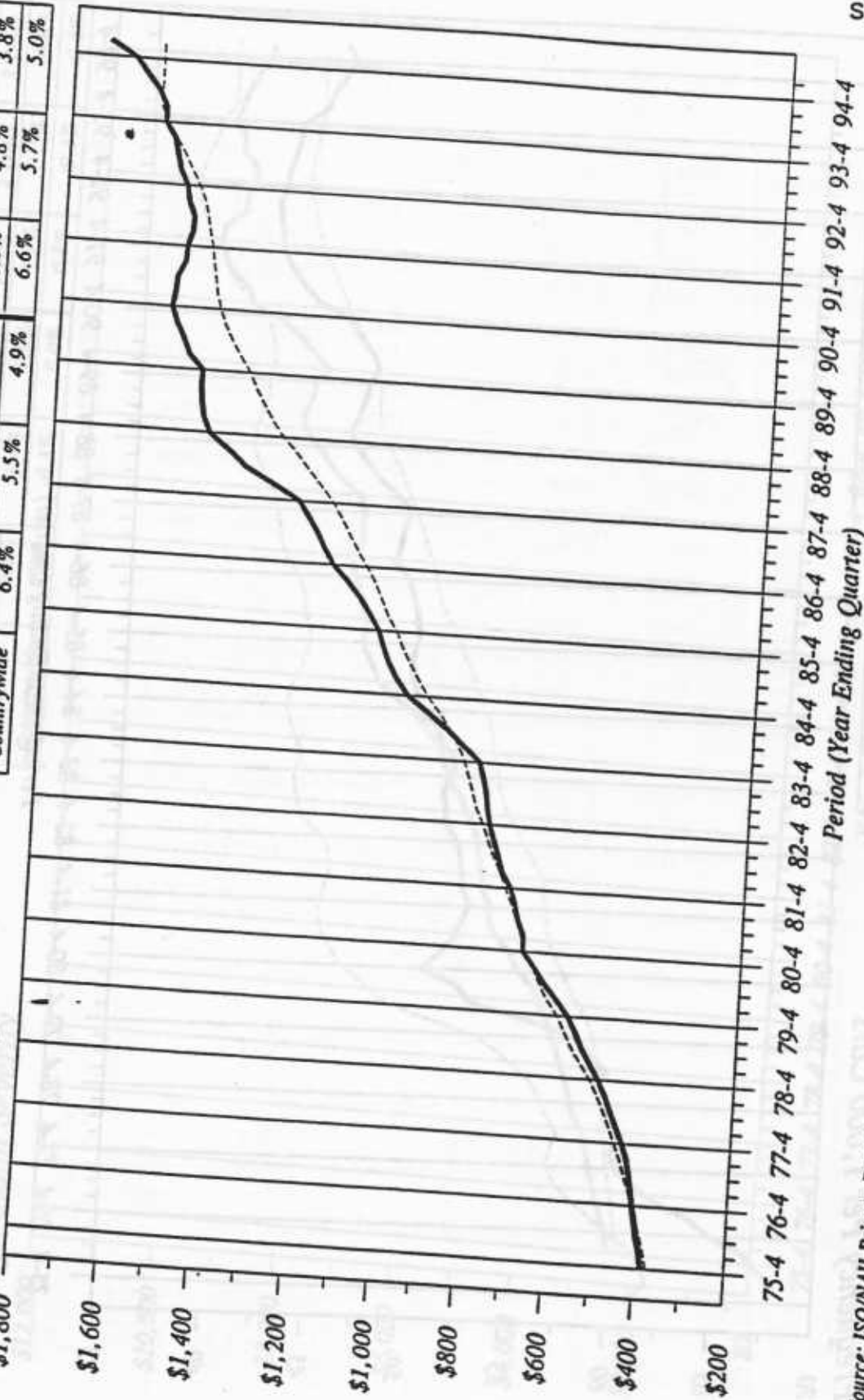


Maryland
 Countrywide

Source: ISO/NAII Private Passenger
Fast Track Data

Property Damage Liability Average Claim Severity

| Annual Trends | Linear | | | Exponential | | |
|---------------|------------------|---------|---------|-------------|---------|---------|
| | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| | Maryland 7.7% | 4.7% | 3.8% | 8.0% | 4.8% | 3.8% |
| Countrywide | 6.4% | 5.5% | 4.9% | 6.6% | 5.7% | 5.0% |

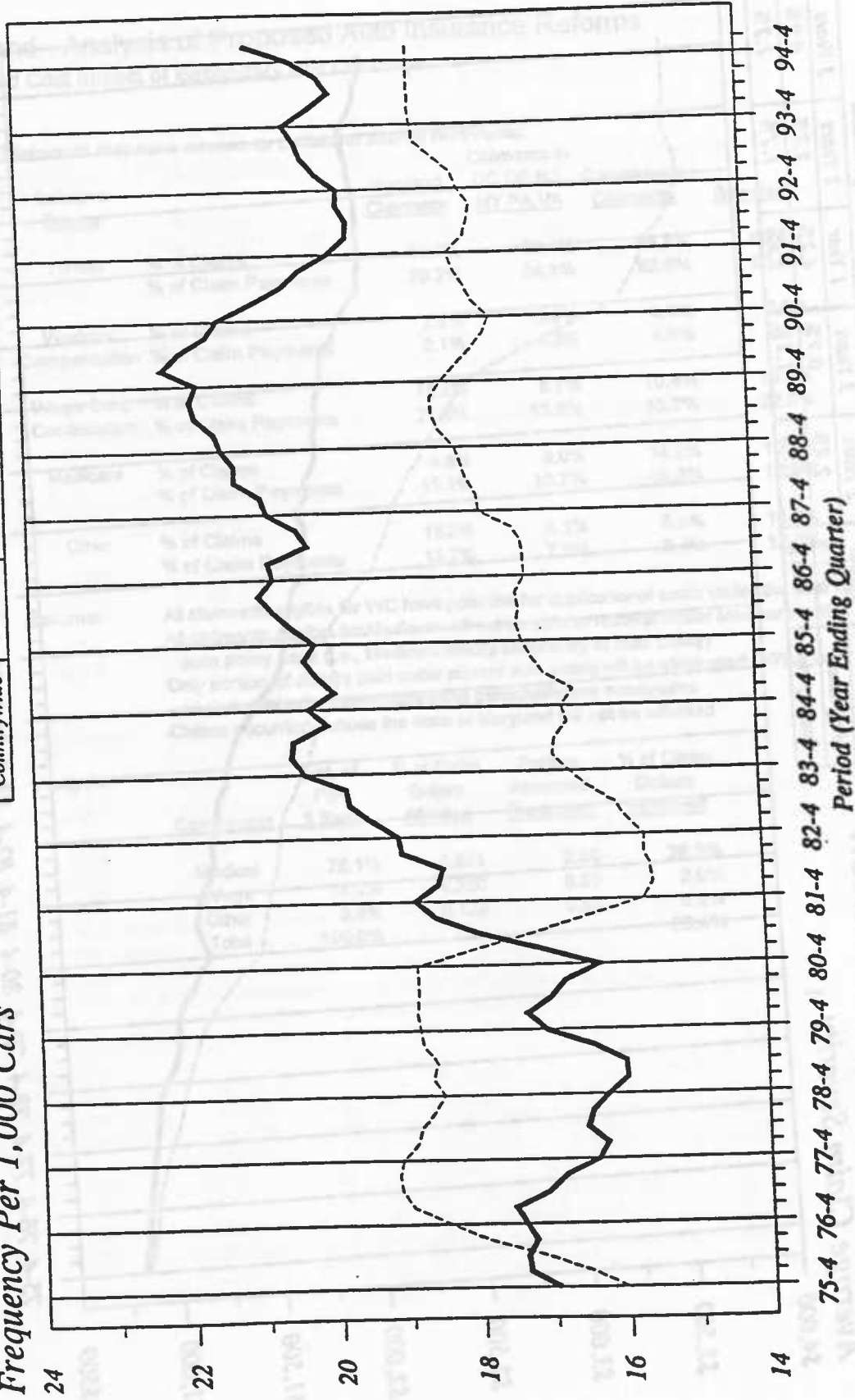


Source: ISO/NAII Private Passenger
Fast Track Data

Exhibit IV
Sheet 5

Personal Injury Protection Frequency Per 1,000 Cars

| Annual Trends | Linear | | | Exponential | | |
|---------------|--------|---------|---------|-------------|---------|---------|
| | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| Maryland | 4.5% | 0.9% | 1.4% | 4.6% | 0.9% | 1.5% |
| Countrywide | 1.0% | 1.3% | 1.8% | 1.0% | 1.3% | 1.8% |

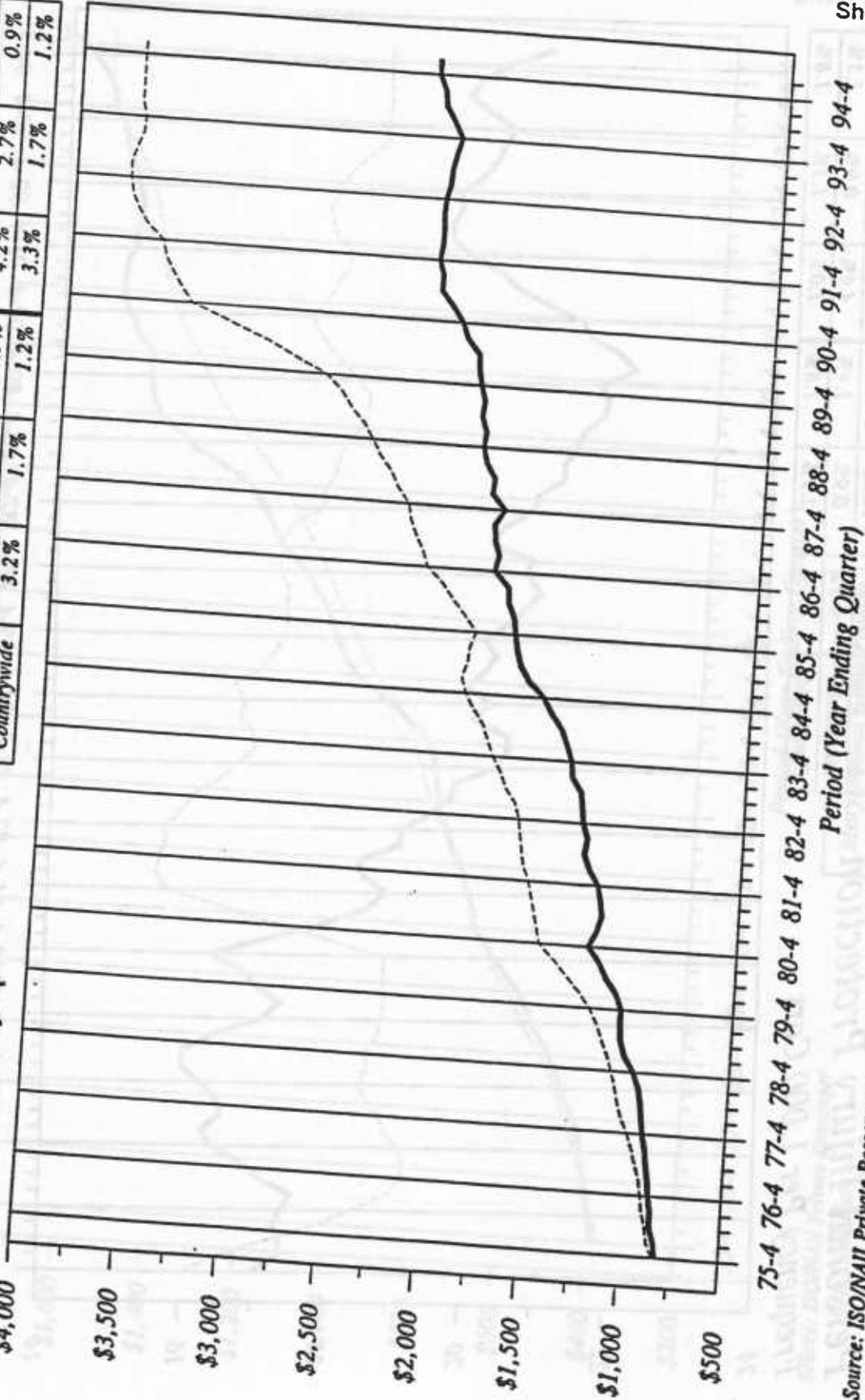


Maryland Countrywide

Source: ISO/NAII Private Passenger
Fast Track Data

Personal Injury Protection Average Claim Severity

| Annual Trends | | Linear | | | Exponential | | |
|---------------|-------------|--------|---------|---------|-------------|---------|---------|
| Maryland | Countrywide | 1 Year | 2 Years | 3 Years | 1 Year | 2 Years | 3 Years |
| | | 4.1% | 2.7% | 0.9% | 4.2% | 2.7% | 0.9% |
| | | 3.2% | 1.7% | 1.2% | 3.3% | 1.7% | 1.2% |



Maryland Countrywide

Maryland - Analysis of Proposed Auto Insurance Reforms Estimated Cost Impact of Secondary PIP Coverage

PIP Claimants that have access to collateral source recoveries

| Collateral Source | | Maryland Claimants | Claimants in DC, DE, NJ, NY, PA, VA | Countrywide Claimants | Selected |
|-------------------------|---------------------|--------------------|-------------------------------------|-----------------------|----------|
| Health | % of Claims | 65.0% | 38.1% | 56.8% | 60.0% |
| | % of Claim Payments | 70.2% | 34.1% | 52.9% | 65.0% |
| Workers Compensation | % of Claims | 2.6% | 3.9% | 4.0% | 2.6% |
| | % of Claim Payments | 2.1% | 4.3% | 4.6% | 2.1% |
| Wage Cont. Continuation | % of Claims | 18.8% | 8.7% | 10.4% | 19.0% |
| | % of Claim Payments | 21.6% | 13.5% | 13.7% | 22.0% |
| Medicare | % of Claims | 9.8% | 9.0% | 14.2% | 10.0% |
| | % of Claim Payments | 15.1% | 10.7% | 16.3% | 15.0% |
| Other | % of Claims | 19.2% | 4.1% | 6.0% | 16.0% |
| | % of Claim Payments | 13.7% | 7.5% | 6.4% | 12.0% |

Assume: All claimants eligible for WC have potential for duplication of costs under the auto system
All claimants eligible for Medicare will not be able to recover under Medicare until auto policy pays (i.e., Medicare strictly secondary to auto policy)
Only portion of dollars paid under current auto policy will be eliminated (50%), due to deductibles/copayments/waiting periods/lifetime maximums
Claims occurring outside the state of Maryland will not be affected

| Analysis: | Component | Dist. of PIP \$ Paid | % of Claim Dollars Affected | Portion Assumed Duplicated | % of Claim Dollars Removed |
|-----------|-----------|----------------------|-----------------------------|----------------------------|----------------------------|
| | Medical | 78.1% | 0.671 | 0.50 | 26.2% |
| | Wage | 18.0% | 0.220 | 0.50 | 2.0% |
| | Other | 3.9% | 0.120 | 0.50 | 0.2% |
| | Total | 100.0% | | | 28.4% |

Maryland - Analysis of Proposed Auto Insurance Reforms Estimated Cost Impact of Elimination of Duplicate Recoveries - UM Coverage

UM benefits must be reduced by compensation payable from collateral sources

- a) In 67% of MD UM claims (90 out of 134), dollars are paid out by the same insurer under both Medical and PIP coverages

| Coverage | Econ Loss | \$ Paid | Maximum % Savings |
|----------|-----------|---------|-------------------|
| UM/UIIM | 258,948 | 598,317 | |
| PIP | | 173,209 | |
| Medical | | 22,153 | |
| Total | | 195,362 | 32.7% |

- b) Other sources of potential duplicate recoveries are for claimants with access to collateral source recoveries:

| Collateral Source | | Maryland Claimants | Claimants in DC,DE,NJ, NY,PA,VA | Countrywide Claimants | Selected |
|-------------------|---------------------|--------------------|---------------------------------|-----------------------|----------|
| Health | % of Claims | 58.5% | 45.1% | 52.1% | 55.0% |
| | % of Claim Payments | 68.2% | 42.5% | 52.4% | 65.0% |
| Work Comp | % of Claims | 8.2% | 8.3% | 5.5% | 8.0% |
| | % of Claim Payments | 10.2% | 8.0% | 7.2% | 10.0% |
| Wage Cont. | % of Claims | 4.3% | 10.0% | 6.8% | 4.5% |
| | % of Claim Payments | 10.2% | 16.3% | 10.1% | 10.0% |
| Medicare | % of Claims | 3.0% | 9.5% | 12.1% | 3.0% |
| | % of Claim Payments | 0.4% | 8.7% | 11.6% | 0.5% |
| Other | % of Claims | 12.0% | 6.3% | 9.9% | 12.0% |
| | % of Claim Payments | 26.6% | 5.0% | 6.8% | 25.0% |

Assume: All claimants eligible for WC have potential for duplication of costs under the auto system
All claimants eligible for Medicare will not be able to recover under Medicare until auto policy pays (i.e., Medicare strictly secondary to auto policy)
Only portion of dollars paid under current auto policy will be eliminated (50%), due to deductibles/copayments/waiting periods/lifetime maximums
Claims occurring outside the state of Maryland will not be affected

Analysis:

| Component | Dist. of UM/UIIM \$ Paid | % of Claim \$ In-State | % of Claim Dollars Affected | Portion Assumed Duplicated | % of Claim Dollars Removed |
|------------|--------------------------|------------------------|-----------------------------|----------------------------|----------------------------|
| Medical | 40.5% | 0.671 | 0.750 | 0.50 | 10.2% |
| Wage | 8.4% | 0.671 | 0.100 | 0.50 | 0.3% |
| Other Econ | 0.5% | 0.671 | 0.250 | 0.50 | 0.0% |
| Non-Econ | 50.6% | 0.671 | 0.634 | 0.50 | 10.8% |
| Total | 100.0% | 0.671 | | | 21.3% |

Maryland - Analysis of Proposed Auto Insurance Reforms Estimated Cost Impact of Elimination of Duplicate Recoveries - BI Coverage

c) Recoveries on third party claims must be reduced by compensation recovered from collateral sources

IRC study asked whether BI claimant would reimburse PIP/Medical insurer - only 2.2% of claim files indicated yes (2.9% of files where yes/no was indicated), amounting to 3.4% of claim dollars

The IRC study also asked BI insurers whether payments were made on behalf of the claimant under other coverages. The "yes" responses indicated payments being made under the PIP and Medical coverages, however, it is not clear that such payments would be duplicated - they in all likelihood relate to the injuries of the claimant that may be pursuing a tort claim against the other (partially) at-fault driver.

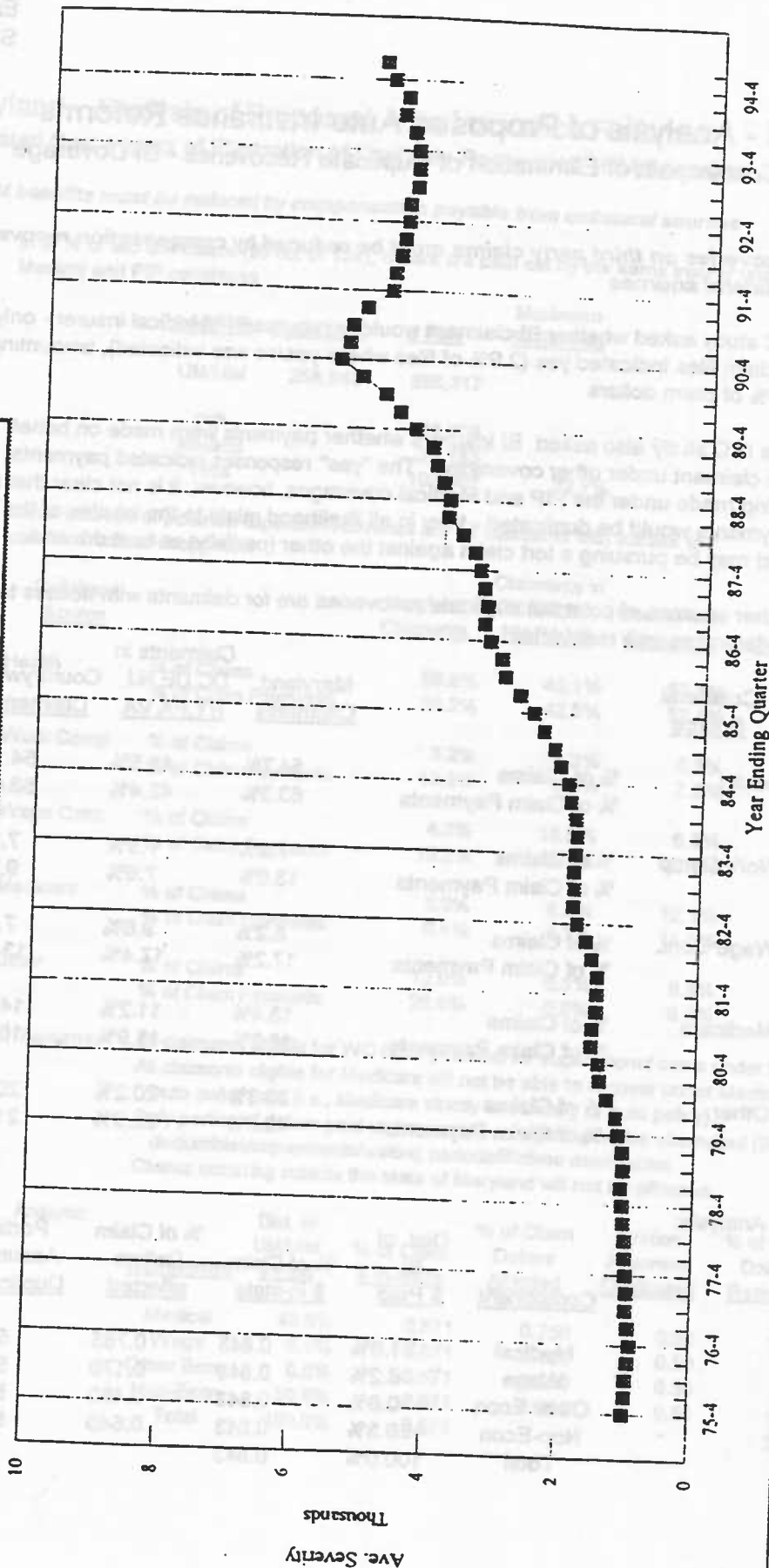
Other sources of potential duplicate recoveries are for claimants with access to collateral source recoveries:

| Collateral Source | | Maryland Claimants | Claimants in DC,DE,NJ, NY,PA,VA | Countrywide Claimants | Selected |
|-------------------|---------------------|--------------------|---------------------------------|-----------------------|----------|
| Health | % of Claims | 54.7% | 41.5% | 54.9% | 55.0% |
| | % of Claim Payments | 63.3% | 42.4% | 58.6% | 63.5% |
| Work Comp | % of Claims | 7.3% | 7.9% | 7.3% | 7.5% |
| | % of Claim Payments | 13.0% | 7.6% | 9.5% | 13.0% |
| Wage Cont. | % of Claims | 8.2% | 9.6% | 7.1% | 8.0% |
| | % of Claim Payments | 17.2% | 17.4% | 13.1% | 17.0% |
| Medicare | % of Claims | 13.4% | 11.2% | 14.6% | 13.5% |
| | % of Claim Payments | 16.3% | 13.9% | 18.0% | 16.5% |
| Other | % of Claims | 30.3% | 20.2% | 20.8% | 30.0% |
| | % of Claim Payments | 45.3% | 22.9% | 21.1% | 45.0% |

Analysis:

| Component | Dist. of BI \$ Paid | % of Claim \$ in-state | % of Claim Dollars affected | Portion Assumed Duplicated | % of Claim Dollars removed |
|------------|---------------------|------------------------|-----------------------------|----------------------------|----------------------------|
| Medical | 31.9% | 0.843 | 0.765 | 50.0% | 10.3% |
| Wage | 8.2% | 0.843 | 0.170 | 50.0% | 0.6% |
| Other Econ | 0.6% | 0.843 | 0.450 | 50.0% | 0.1% |
| Non-Econ | 59.3% | 0.843 | 0.640 | 50.0% | 16.0% |
| Total | 100.0% | 0.843 | | | 27.0% |

Colorado PIP Average Claim Severity
Year Ending Quarter



Source: ISO/NAI Fast Track Data

Colorado
Average PIP Claim Severity
ISO/NAII Fast Track Data

| Year Ending Quarter | Fitted Curves | | Ratio of Actual to Fitted Linear Curve |
|----------------------------------|---------------|--------------------|--|
| | Actual | Exponential Linear | |
| 85-4 | | 2,081 | |
| 86-1 | 2,791 | 2,587 | |
| 86-2 | 3,021 | 2,688 | |
| 86-3 | 3,083 | 2,793 | |
| 86-4 | 3,262 | 2,902 | |
| 87-1 | 3,363 | 3,015 | |
| 87-2 | 3,331 | 3,133 | |
| 87-3 | 3,376 | 3,255 | |
| 87-4 | 3,445 | 3,381 | |
| 88-1 | 3,531 | 3,513 | |
| 88-2 | 3,729 | 3,650 | |
| 88-3 | 3,954 | 3,793 | |
| 88-4 | 3,934 | 3,940 | |
| 89-1 | 4,035 | 4,094 | |
| 89-2 | 4,142 | 4,254 | |
| 89-3 | 4,211 | 4,419 | |
| 89-4 | 4,475 | 4,592 | |
| 90-1 | 4,711 | 4,771 | |
| 90-2 | 4,929 | 4,957 | |
| 90-3 | 5,270 | 5,150 | |
| 90-4 | 5,589 | 5,351 | |
| 91-1 | 5,468 | 5,559 | |
| 91-2 | 5,427 | 5,776 | |
| 91-3 | 5,230 | 6,001 | |
| 91-4 | 4,870 | 6,235 | |
| 92-1 | 4,839 | 6,478 | |
| 92-2 | 4,765 | 6,731 | |
| 92-3 | 4,713 | 6,993 | |
| 92-4 | 4,672 | 7,266 | |
| 93-1 | 4,658 | 7,549 | |
| 93-2 | 4,560 | 7,843 | |
| 93-3 | 4,552 | 8,149 | |
| 93-4 | 4,558 | 8,466 | |
| 94-1 | 4,623 | 8,796 | |
| 94-2 | 4,780 | 9,139 | |
| 94-3 | 4,734 | 9,496 | |
| 94-4 | 4,933 | 9,866 | |
| 95-1 | 5,063 | 10,250 | |
| 95-2 | | 10,650 | |
| 95-3 | | 11,065 | |
| 95-4 | | 11,496 | |
| Ave. Annual Trend 1986 - 1990 | | | 16.5% 12.9% |
| r value | | | 0.984 0.968 |
| | | | 0.620 0.615 0.622 0.602 0.614 0.617 |
| | | | 4,493 4,578 4,664 4,749 4,834 4,920 5,005 |
| | | | 7.2% |
| | | | 0.910 |

Medicare Reimbursements

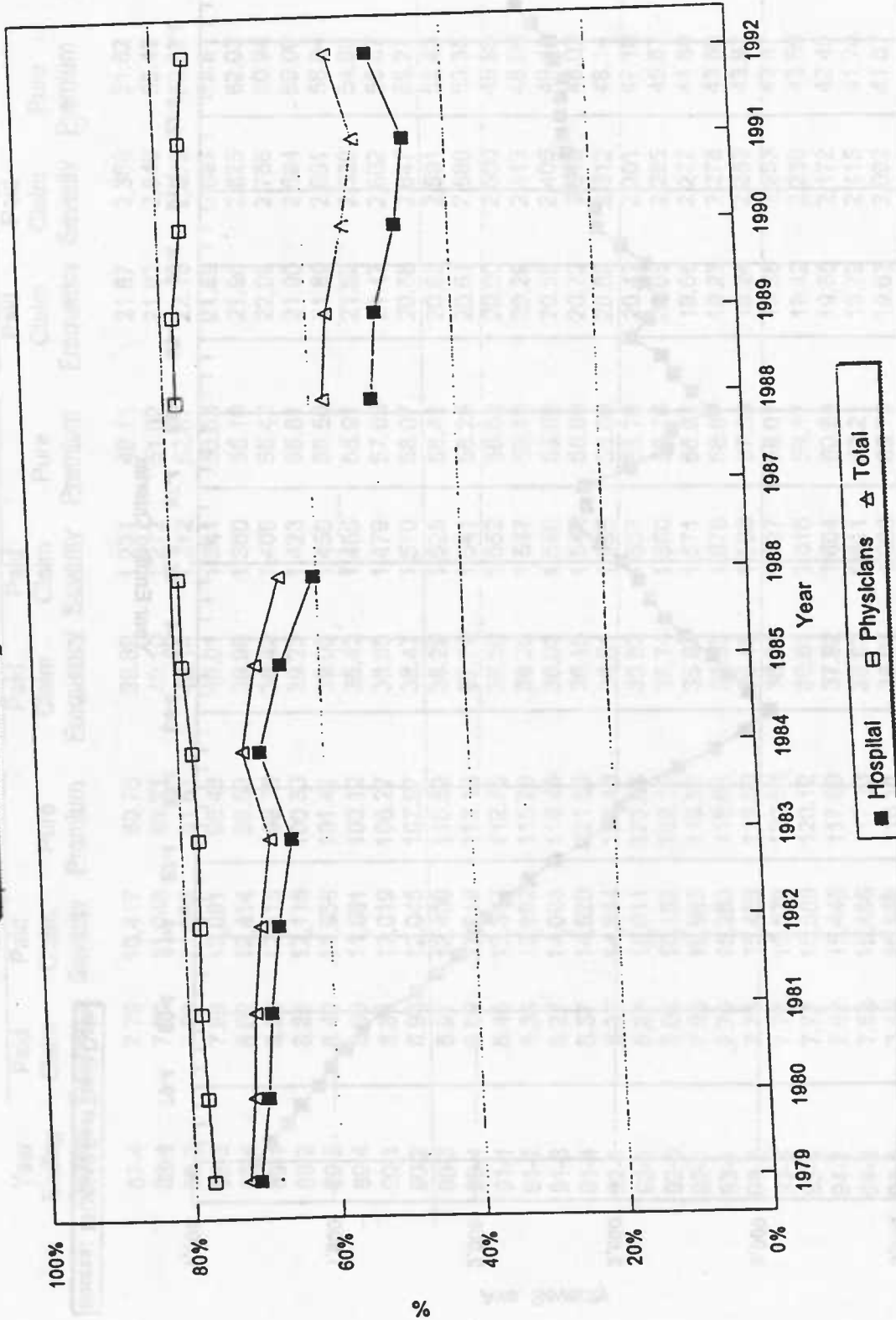
Source: Statistical Abstract of the United States

| Year | Persons Age 65+ | | Disabled | | Total | | Total Charges |
|------|--------------------|--------------------|------------------|--------------------|------------------|--------------------|---------------|
| | Hospital Charges | Physicians Charges | Hospital Charges | Physicians Charges | Hospital Charges | Physicians Charges | |
| 1979 | 22,908 | 7,256 | 3,257 | 886 | 26,165 | 8,142 | 34,307 |
| 1980 | 28,119 | 8,802 | 3,976 | 1,079 | 32,095 | 9,881 | 41,976 |
| 1981 | 33,829 | 10,483 | 4,777 | 1,294 | 38,606 | 11,777 | 50,383 |
| 1982 | 40,987 | 12,383 | 5,668 | 1,495 | 46,655 | 13,878 | 60,533 |
| 1983 | 46,489 | 14,572 | 6,239 | 1,727 | 52,728 | 16,299 | 69,027 |
| 1984 | 43,446 | 15,354 | 5,567 | 1,669 | 49,013 | 17,023 | 66,036 |
| 1985 | 49,247 | 17,693 | 6,579 | 1,822 | 55,826 | 19,515 | 75,341 |
| 1986 | 53,436 | 19,131 | 7,205 | 1,940 | 60,641 | 21,071 | 81,712 |
| 1987 | data not available | | | | | | |
| 1988 | 70,292 | 23,987 | 9,080 | 2,230 | 79,372 | 26,217 | 105,589 |
| 1989 | 78,840 | 26,274 | 10,337 | 2,247 | 89,177 | 28,521 | 117,698 |
| 1990 | 90,846 | 30,447 | 11,910 | 2,907 | 102,756 | 33,354 | 136,110 |
| 1991 | 105,596 | 32,138 | 14,114 | 3,065 | 119,710 | 35,203 | 154,913 |
| 1992 | 116,977 | 34,083 | 15,951 | 3,787 | 132,928 | 37,870 | 170,798 |

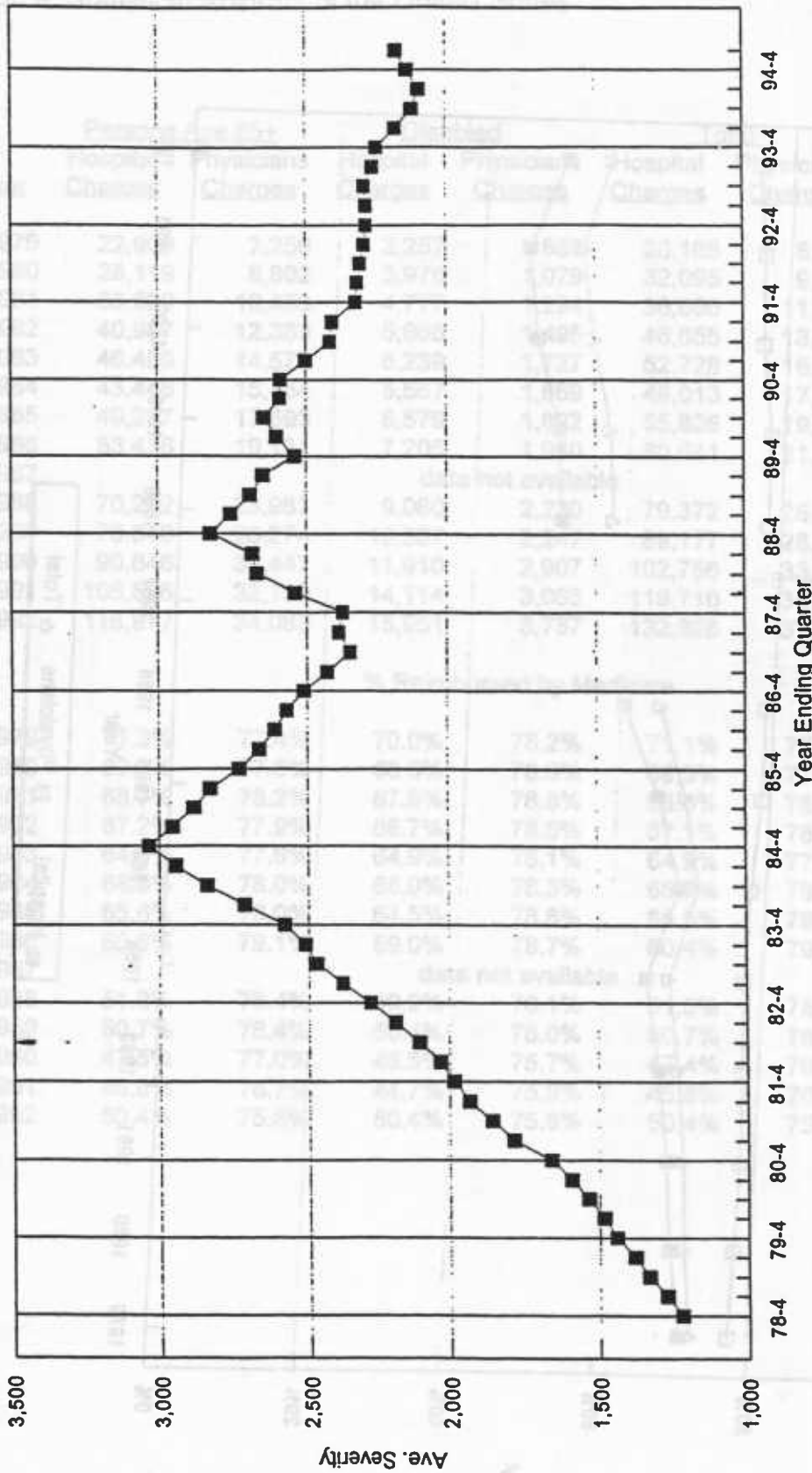
% Reimbursed by Medicare

| | | | | | | | |
|------|--------------------|-------|-------|-------|-------|-------|-------|
| 1979 | 71.3% | 77.4% | 70.0% | 78.2% | 71.1% | 77.5% | 72.6% |
| 1980 | 69.6% | 77.8% | 68.5% | 78.6% | 69.5% | 77.9% | 71.4% |
| 1981 | 68.7% | 78.2% | 67.9% | 78.8% | 68.6% | 78.3% | 70.9% |
| 1982 | 67.2% | 77.9% | 66.7% | 78.5% | 67.1% | 78.0% | 69.6% |
| 1983 | 64.9% | 77.6% | 64.9% | 78.1% | 64.9% | 77.7% | 67.9% |
| 1984 | 68.8% | 78.0% | 68.0% | 78.3% | 68.7% | 78.0% | 71.1% |
| 1985 | 65.6% | 79.0% | 64.5% | 78.8% | 65.5% | 79.0% | 69.0% |
| 1986 | 60.6% | 79.1% | 59.0% | 78.7% | 60.4% | 79.1% | 65.2% |
| 1987 | data not available | | | | | | |
| 1988 | 51.8% | 78.4% | 49.2% | 78.1% | 51.5% | 78.4% | 58.2% |
| 1989 | 50.7% | 78.4% | 50.4% | 78.0% | 50.7% | 78.4% | 57.4% |
| 1990 | 47.5% | 77.0% | 46.5% | 75.7% | 47.4% | 76.9% | 54.6% |
| 1991 | 46.0% | 76.7% | 44.7% | 75.9% | 45.8% | 76.6% | 52.8% |
| 1992 | 50.4% | 75.6% | 50.4% | 75.6% | 50.4% | 75.6% | 56.0% |

Medicare Reimbursement Levels % Reimbursement of Covered Charges



PIP Claim Severity
Pennsylvania - Private Passenger Auto



Source: ISO/NAI Fast Track Data

ISO/NAII Fast Track Data
Pennsylvania

| Year Ending Quarter | BI | | | PD | | | PIP | | | Ratio of BI to PD Frequency |
|---------------------------|-------------------|-------------------|-----------------|-------------------|-------------------|-----------------|-------------------|-------------------|-----------------|-----------------------------------|
| | Paid Frequency | Claim Severity | Pure Premium | Paid Frequency | Claim Severity | Pure Premium | Paid Frequency | Claim Severity | Pure Premium | |
| 87-4 | 7.75 | 10,417 | 80.76 | 39.89 | 1,231 | 49.11 | 21.87 | 2,369 | 51.82 | 0.194 |
| 88-1 | 7.80 | 11,046 | 86.21 | 40.10 | 1,272 | 51.02 | 21.82 | 2,540 | 55.42 | 0.195 |
| 88-2 | 7.90 | 11,585 | 91.51 | 40.14 | 1,312 | 52.67 | 22.10 | 2,672 | 59.05 | 0.197 |
| 88-3 | 7.98 | 12,091 | 96.43 | 40.01 | 1,341 | 53.65 | 21.89 | 2,687 | 58.81 | 0.199 |
| 88-4 | 8.02 | 12,414 | 99.52 | 39.98 | 1,380 | 55.19 | 21.96 | 2,825 | 62.03 | 0.201 |
| 89-1 | 8.23 | 12,118 | 99.76 | 39.42 | 1,406 | 55.42 | 22.09 | 2,758 | 60.94 | 0.209 |
| 89-2 | 8.28 | 12,116 | 100.33 | 39.23 | 1,423 | 55.81 | 21.90 | 2,694 | 59.00 | 0.211 |
| 89-3 | 8.49 | 11,958 | 101.47 | 39.00 | 1,450 | 56.56 | 21.89 | 2,651 | 58.04 | 0.218 |
| 89-4 | 8.69 | 11,861 | 103.12 | 38.42 | 1,455 | 55.91 | 21.52 | 2,539 | 54.63 | 0.226 |
| 90-1 | 8.84 | 12,019 | 106.27 | 38.95 | 1,479 | 57.63 | 21.47 | 2,602 | 55.87 | 0.227 |
| 90-2 | 8.96 | 12,045 | 107.97 | 38.47 | 1,510 | 58.07 | 20.88 | 2,647 | 55.27 | 0.233 |
| 90-3 | 8.91 | 12,400 | 110.52 | 38.29 | 1,525 | 58.41 | 20.62 | 2,591 | 53.43 | 0.233 |
| 90-4 | 8.69 | 12,914 | 112.18 | 37.79 | 1,541 | 58.25 | 20.61 | 2,589 | 53.35 | 0.230 |
| 91-1 | 8.45 | 13,347 | 112.75 | 36.50 | 1,552 | 56.64 | 20.00 | 2,500 | 49.99 | 0.232 |
| 91-2 | 8.34 | 13,892 | 115.79 | 36.26 | 1,547 | 56.10 | 20.29 | 2,413 | 48.98 | 0.230 |
| 91-3 | 8.27 | 14,088 | 116.46 | 36.03 | 1,546 | 55.69 | 20.55 | 2,406 | 49.43 | 0.230 |
| 91-4 | 8.37 | 14,520 | 121.53 | 36.15 | 1,544 | 55.83 | 20.72 | 2,318 | 48.03 | 0.232 |
| 92-1 | 8.36 | 14,884 | 124.46 | 36.01 | 1,555 | 56.00 | 20.82 | 2,312 | 48.14 | 0.232 |
| 92-2 | 8.23 | 15,011 | 123.56 | 35.82 | 1,557 | 55.78 | 20.47 | 2,301 | 47.10 | 0.230 |
| 92-3 | 8.06 | 15,152 | 122.16 | 35.74 | 1,560 | 55.76 | 20.08 | 2,285 | 45.87 | 0.226 |
| 92-4 | 7.93 | 15,043 | 119.32 | 35.67 | 1,571 | 56.02 | 19.68 | 2,277 | 44.80 | 0.222 |
| 93-1 | 7.76 | 15,283 | 118.64 | 36.07 | 1,576 | 56.87 | 19.23 | 2,278 | 43.80 | 0.215 |
| 93-2 | 7.73 | 15,466 | 119.60 | 36.15 | 1,588 | 57.39 | 19.24 | 2,283 | 43.92 | 0.214 |
| 93-3 | 7.77 | 15,529 | 120.64 | 36.31 | 1,597 | 58.01 | 19.38 | 2,253 | 43.67 | 0.214 |
| 93-4 | 7.71 | 15,589 | 120.12 | 36.61 | 1,616 | 59.17 | 19.42 | 2,239 | 43.50 | 0.211 |
| 94-1 | 7.62 | 15,448 | 117.69 | 37.92 | 1,604 | 60.84 | 19.55 | 2,172 | 42.45 | 0.201 |
| 94-2 | 7.58 | 15,456 | 117.23 | 38.62 | 1,611 | 62.21 | 19.72 | 2,115 | 41.70 | 0.196 |
| 94-3 | 7.46 | 15,563 | 116.11 | 38.97 | 1,636 | 63.75 | 19.63 | 2,092 | 41.07 | 0.191 |
| 94-4 | 7.43 | 16,116 | 119.81 | 39.22 | 1,661 | 65.15 | 19.54 | 2,131 | 41.65 | 0.189 |
| 95-1 | 7.47 | 16,077 | 120.05 | 37.78 | 1,722 | 65.04 | 19.81 | 2,169 | 42.96 | 0.198 |

PIP Claim Severity
Private Passenger Autos
1955-1960



Source: Bureau of Motor Vehicle Insurance
1955-1960

